

REPARATIONS AND THE "MODEL MINORITY" IDEOLOGY OF ACQUIESCENCE: THE NECESSITY TO REFUSE THE RETURN TO ORIGINAL HUMILIATION

CHRIS K. IJIMA*

Any attempt to "soften" the power of the oppressor in deference to the weakness of the oppressed almost always manifests itself in the form of false generosity; indeed, the attempt never goes beyond this. In order to have the continued opportunity to express their "generosity," the oppressors must perpetuate injustice as well. An unjust social order is the permanent fount of this "generosity," which is nourished by death, despair, and poverty. That is why the dispensers of false generosity become desperate at the slightest threat to its source.

True generosity consists precisely in fighting to destroy the causes which nourish false charity. True generosity lies in striving so that . . . [people's] hands—whether of individuals or entire peoples—

* Assistant Professor of Law and Director of the PreAdmission Program, William S. Richardson School of Law, University of Hawai'i. B.A. 1969, Columbia University; J.D. 1988, New York Law School.

This is a revised version of an article originally published in 7 S. CAL. INTERDISC. L.J. 1 (1998) entitled, *Political Accommodation and the Ideology of the "Model Minority": Building a Bridge to White Minority Rule in the 21st Century*.

The author wishes to thank his friends and former colleagues at Western New England College School of Law, particularly Professors Anne Goldstein, Leonard Baynes, David Moss, and Gabriel Chin for their comments and criticism of the article, and for their general support, and to Professors Eric K. Yamamoto, Natsu Taylor Saito, Keith Aoki, Gil Gott, and Dean Hashimoto for their suggestions and encouragement. My gratitude also goes to my research assistant Kourosh Salehi and to the WNEC faculty secretaries: Nancy Hachigian, Carmen Alexander, and Donna Haskins. In addition, deepest thanks go to Dean Donald Dunn of Western New England College School of Law for his professional and personal support, and in particular for his generous funding of my research, as well as to Professor Sumi Cho for her leadership and to the Civil Liberties Public Educational Fund for their support. Also, I wish to acknowledge the support of Dean Lawrence C. Foster of the William S. Richardson School of Law, Dean James Steven Rogers and Professor Alfred C. Yen of Boston College Law School, and the assistance of Frieda Honda, the faculty secretary at the University of Hawai'i.

Further, I want to pay a special thanks to Aiko Yoshinaga-Herzig and Jack Herzig for their invaluable assistance and support. If one reads through the many books on the struggle for redress, their contributions are legion and well documented. Without Aiko sitting down one afternoon with me and patiently guiding me through her material, this piece could not have been attempted, let alone written. Obviously, any mistakes or problems with this piece are wholly mine.

*need to be extended less and less in supplication, so that more and more they become human hands which . . . transform the world.*¹

PROLOGUE

My friend Legan sent me an e-mail describing a conversation his wife, Tomie, had while she was working on an artistic project in Poston, Arizona. Tomie, a much respected activist and artist, had been asked to create art work inspired by her interactions with two communities in Poston²—the Japanese-American and the Native American. I reprint his e-mail post here almost verbatim:

Well, Tomie came home earlier this week. She had a busy but wonderful and moving experience with the Japanese and Native American communities. One story she told me, really shows how the Native Americans got f*cked over by this country. When they first started bringing in the JAs [Japanese Americans] to Poston, the gov't forgot to tell the tribe that they were putting them on their reservation. The next thing they know, army trucks are invading their reservations . . . bringing in all these building supplies and fencing in part of their lands. When the elders asked what was going on, they were told that they were bringing in Japanese spies to lock them up for the duration of the war. Finally, an agreement was made that once the war was over, the land would be returned to its original state. As the JAs started to move in, the NA [Native Americans] were seeing "nice" wooden barracks with indoor plumbing being constructed. Truck loads of fresh fruit and vegetables and supplies were being shipped in. The NAs were thinking, hey . . . these spies are living in better conditions than we are. Later, they were seeing the JAs building fish ponds in front of their barracks and growing flowers and developing crops. Something the NAs were never able to do, because they were not farmers, but sheep and cattle herders. A mini paradise was being developed in front of their eyes behind the barb wire fences.

Finally, thanks go to my family: my wife Jane, my mother Kazu, and my dad Takeru, for their inspiration and encouragement to continue fighting for equity and justice, to the Japanese-American community who survived and prevailed over our collective incarceration, and to the many activists, lawyers and community people of all colors who struggled to make redress a reality.

¹ PAULO FREIRE, *PEDAGOGY OF THE OPPRESSED* 28-29 (Myra Bergman Ramos trans., 1972).

² Poston, Arizona was a site of one of the internment camps for Japanese Americans during World War II.

When the war was over and the JAs left, instead of turning over the barracks (with real plumbing) and leaving the trees, flowers, and crops and giving them to the NAs; the gov't in accordance to their agreement with the elders, plowed everything over. They dug these huge ditches and buried all the wood, plumbing, etc.

When the army left, the NAs began to dig up these ditches to try to salvage all of these building supplies. The army found out and arrested many of them and reburied it and put tons of rock and boulders on it so the NAs couldn't get at it. It became real easy to understand why the NAs had such a resentment about the JAs (they were living better than they were and also they were fiercely patriotic).³

The ironies present in these circumstances—a concentration camp for citizens imprisoned as foreign aliens built on land that served as a prison for original inhabitants created by conquering invaders, those imprisoned outside the barbed wire wanting what was inside, those inside the barbed wire wishing they were outside of it—would be poetic if not so tragic. But as I read the e-mail, I realized that this sad story of the past was a metaphor for an equally sad future if the lessons of internment and redress were not heeded.

INTRODUCTION

A few years ago when they had reached their seventies, my parents, like other Nisei, received \$20,000 from the United States in payment for their incarceration during World War II.⁴ Needless to say, I have no personal problem with the concept of their receiving individual monetary reparations. Indeed, the amount given to them was very little recompense for the fear, time, humiliation, and material loss that relocation wreaked upon them, their families, and community.⁵ The Purple Heart my father received in Italy provided little solace for the

³ E-mail from Legan Wong to Chris K. Iijima, Assistant Professor of Law, William S. Richardson School of Law, University of Hawai'i (Nov. 23, 1997) (on file with author).

⁴ On August 10, 1988, President Ronald Reagan signed H.R. 442, the Civil Liberties Act of 1988, Pub. L. No. 100-383, 102 Stat. 903 (codified at 50 U.S.C. app. § 1989 (1990)) [hereinafter "The Civil Liberties Act" or "Act" or "redress bill" or "bill"].

⁵ On February 19, 1942, President Franklin D. Roosevelt signed Executive Order 9066 which, in effect, excluded all persons of Japanese ancestry from residing on the West Coast of the United States. The vast majority of those interned were Issei and Nisei. My parents are "Nisei"—American born Japanese Americans. My grandparents are "Issei," the immigrant generation. My generation is the third, "Sansei." There were also "Kibei," who were American born but were sent overseas for education.

friends he lost in the battlefields and dirt roads of Europe, fighting for a nation that had locked away their families. The money was deserved, yet small compensation for an outrage motivated by racial hysteria and fueled by a history of racial paranoia.

The source of my discomfort is more long range. As one African-American scholar described her ambivalent reaction to the news of Japanese-American reparations:

The apology was so appropriate and the payment so justified, however insufficient it was, that the source of my ambivalent reaction was at first difficult to identify. After some introspection, I guiltily discovered that my sentiments were related to a very dark, brooding feeling that I had fought long and hard to conquer—inferiority. A feeling that took first root in the soil of “Why them and not me?”⁶

Indeed, there has been a long history of attempts by African Americans to attain redress not only for slavery, but also for its effects.⁷ However, there has been little congressional support. On November 20, 1989, Congressman John Conyers introduced House Resolution 3745 calling for a commission to examine the institution of slavery—*de*

Although I am aware of the implications and power of terminology, I purposefully use certain terms loosely and interchangeably. For example, I refer to the camps as “internment camps,” “relocation camps,” “relocation centers,” or “concentration camps.” I refer to the extraordinary movement to redress the camp experience as “redress,” and sometimes I refer to the money damages as “reparations” even though I know that some might consider the term “reparations” as implying that money damages paid to American citizens for constitutional violations are equivalent to money paid to non-Americans as wartime reparations. I use the words interchangeably simply because to me they signify the same things—camp=prison and redress/reparations=justice.

⁶Vincene Verdun, *If the Shoe Fits, Wear it: An Analysis of Reparations to African Americans*, 67 TUL. L. REV. 597, 647 (1993).

⁷See *id.* at 600–07. Professor Verdun chronicles the various attempts at reparations for African Americans from the end of the Civil War, to the Black Manifesto in the 1960s demanding \$500 million dollars from churches and synagogues, to the claims for land and reparations by those such as the Nation of Islam and Queen Mother Moore, to the National Coalition of Blacks for Reparations as well as bills relating to reparations introduced in Congress and in state legislatures. See *id.*; see also BORIS BITTKER, *THE CASE FOR BLACK REPARATIONS* (1973) (reviewing the potential legal theories for and obstacles to reparations for African Americans); Rhonda V. Magee, *The Master's Tools From the Bottom Up: Responses to African-American Reparations Theory in Mainstream and Outsider Remedies Discourse*, 79 VA. L. REV. 863, 876–92 (1993) (reviewing the history of the attempts for reparations for African Americans).

In 1995, the Florida state legislature awarded \$150,000 to each of nine survivors, as well as other monetary awards to 143 descendants, of a Black community in Rosewood, Florida, burned down by a rioting white mob in 1923. Lori S. Robinson, *Righting a Wrong Among Black Americans, the Debate is Escalating Over Whether an Apology for Slavery is Enough*, SEATTLE POST-INTELLIGENCER, June 29, 1997, at E1.

jure and *de facto* discrimination against African Americans.⁸ While it continues to languish in congressional committee purgatory, Conyers has unsuccessfully renewed his bill in every Congress since 1989.⁹

The simple notion of a national apology for slavery has raised much controversy. On June 12, 1997, Congressman Tony Hall introduced a house resolution calling for an apology to those who suffered as slaves under the Constitution and laws of the United States.¹⁰ The response was quick and overwhelmingly negative. A national poll found that 61% of the people polled disfavored a congressional apology for slavery, even as Blacks favored the apology by a two-to-one margin.¹¹ Even Congressman Hall, the sponsor of the resolution, was "stunned" at the amount and level of criticism of his proposal.¹² Perhaps what was most striking about the reaction to the apology proposal was the immediate dismissal by Congress and the President of any consideration of Black reparations.¹³ Even during the debate over Japanese-

⁸ H.R. 3745 reads in relevant part:

A bill to acknowledge the fundamental injustice, cruelty, brutality and inhumanity of slavery in the United States and the Thirteen American Colonies between 1619 and 1685 and to establish a commission to examine the institution of slavery, subsequent *de jure* and *de facto* racial and economic discrimination against African-Americans, and the impact of these forces on living African Americans, to make recommendations to the Congress on appropriate remedies, and for other purposes

....

H.R. 3745, 101st Cong. (1989).

⁹ In 1991, Conyers enlisted 19 other Representatives as co-sponsors of the bill, H.R. 1684. 137 CONG. REC. H2134 (1991). See Scott Shepard, *Slavery Apology Plan Raises Reparations Issue*, THE ATLANTA CONST., June 12, 1997, at A6 (stating that Conyers has reintroduced his commission legislation in every session of Congress since 1989); Robinson, *supra* note 7 (same); Jill Zimmerman & Brian McGrory, *Talk of Apologizing for Slavery Sparks Debate on Efficacy*, THE BOSTON GLOBE, June 17, 1997, at A1 (same).

¹⁰ See H.R. Res. 96, 105th Cong. (1997).

¹¹ See Paul Leavitt & Robert Silvers, *Poll: Congress Shouldn't Make Apology for Slavery*, USA TODAY, July 2, 1997, at A5 (citing a USA TODAY/CNN/Gallup poll). The math indicates that if approximately 66% of Blacks polled were in favor, then the percentage of whites disfavoring an apology must have been significantly higher than 61%. See *id.*

¹² See Michael A. Fletcher, *For Americans, Nothing is Simple About Making Apology for Slavery; Congressman's Suggestion Draws Fire From All Sides*, THE WASH. POST, Aug. 5, 1997, at A1. The article reports that Hall concedes his idea is "virtually dead," that he has received hundreds of letters and phone messages "most[ly] condemning his idea, often with harsh racial language." See *id.* Indeed, the range of negative sentiments have been expressed in statements advocating for apologies to those who were stripped of their slaves, as well as in assertions promoting the notion that thanks should be given to the slave traders who "rescued" slaves from Africa. See *id.* Hall is quoted as stating, "The reaction has stunned me . . ." See *id.* The conservative congressional reaction was predictably negative with Speaker of the House Gingrich dismissing the measure as "emotional symbolism." See Shepard, *supra* note 9, at A6.

¹³ See Shepard, *supra* note 9 ("Congressional leaders are cool to the notion that the federal government should formally apologize for slavery, perhaps because such an apology would open the door to discussion of monetary reparations for descendants of slaves."). When President

American redress, opponents of the redress bill warned of the possibility that its passage would set a precedent for reparations to other groups.¹⁴ It is no wonder that other people of color, particularly African Americans who support reparations to Japanese Americans, also feel vaguely unsettled about it.

Moreover, the sentiment that there is something disquieting about Congress granting redress to Japanese Americans, but refusing even to consider the issue with respect to another deserving group, has not been lost on Asian-American legal scholars. In his incisive article, *Friend, or Foe or Something Else: Social Meanings of Redress and Reparations*, Professor Eric Yamamoto articulated the dangers of Japanese-American reparations in a larger context.¹⁵ Since reparations do not change the "fundamental realities of power," Yamamoto argued, it may become a means by which "illusions of change" are fostered, thereby perpetuating the political structures that gave rise to the original injuries.¹⁶ Furthermore, he surmised that the support of reparations by a Reagan-Bush Administration could have been explained by its desire to bolster its image among moderate voters.¹⁷ Support of

Clinton rejected the idea of a national apology for slavery, there was press speculation that his rejection was fueled by his concern about the reparations issue. See Associated Press, *Clinton: No Apology for Slavery*, THE SALT LAKE TRIB., Aug. 6, 1997, at A4 (reporting that aides privately stated that the White House was concerned about reparations); see also Zuckerman & McGroarty, *supra* note 9 (reporting that Clinton "did not think the federal government should pay reparations to the descendants of slaves").

Significantly, the congressional supporters of redress assured Congress that the redress bill would "not open the door for claims by descendants of former slaves or the descendants of Native American victims of the Federal Government's 19th century policies with respect to American Indians," since payments were not to be made to heirs or descendants of internees under the redress bill. See 134 CONG. REC. S4271 (daily ed. Apr. 19, 1988) (statement of Sen. Matsunaga).

¹⁴ Senator Wallop of Wyoming offered an amendment that no funds would be appropriated for Japanese Americans until the Cherokee Nation was compensated for the Trail of Tears. 134 CONG. REC. S4393 (daily ed. Apr. 20, 1988). Senator Helms of North Carolina offered an amendment to bar Mexicans', Native Americans' or others' territorial claims. See *id.* at S4394. Given the probability that any reparations bill for Native Americans—America's first internees—would neither be forthcoming nor successful, this opposition to Japanese-American redress on the basis of a preeminent Native American redress strikes a cynical chord. In fact, in a touch of even greater cynicism, Senator Helms, a longtime opponent of civil rights legislation, voiced his opposition to Japanese-American redress in part because of the possibility of its rationale being extended to African-American victims of Jim Crow education policies. See *id.* at S4411; see also 134 CONG. REC. S4335 (1988) (remarks of Sen. Chafee about the possible precedent in terms of reparations to Native Americans and African Americans); 134 CONG. REC. H6314 (1988) (statement by Congressman Davis that it is unfair to first compensate Japanese Americans when there were many other injustices done to other groups that should be compensated first).

¹⁵ See generally Eric K. Yamamoto, *Friend, or Foe or Something Else: Social Meanings of Redress and Reparations*, 20 DENV. J. INT'L L. & POL'Y 223 (1992).

¹⁶ See *id.* at 231-32, 240-41.

¹⁷ See *id.* at 231.

reparations helped strengthen the appearance internationally that the United States, as a country, was committed to human rights.¹⁸ Finally, such support allowed the Republican Administration to point to a "model minority" group to defend its conservative racial policies.¹⁹ Indeed, Yamamoto speculated that a pending class action lawsuit concerning the internment, *Hohri v. United States*,²⁰ threatened the possi-

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See *Hohri v. United States*, 586 F. Supp. 769 (D.D.C. 1984), *aff'd in part rev'd in part*, 782 F.2d 227 (D.C. Cir. 1986), *vacated* 482 U.S. 64 (1987), *on remand*, 847 F.2d 779 (Fed. Cir. 1988), *cert. denied*, 488 U.S. 925 (1988).

Hohri ultimately turned on the issue of whether the six-year statute of limitations had run on the plaintiffs' constitutional takings claim. See 847 F.2d at 779. In *Korematsu v. United States* and *Hirabayashi v. United States*, both challenges to the internment, the Supreme Court held that the internment was constitutional based upon the Government's allegations of military necessity. 782 F.2d at 232-33. For a review of *Korematsu* and *Hirabayashi* cases, see *infra* note 37.

The *Hohri* plaintiffs, representing a class of former internees, argued that the Government had purposely and fraudulently concealed evidence from the Supreme Court during the *Korematsu* and *Hirabayashi* cases that indicated there was no military necessity for the internment, and that the six-year statute had therefore been tolled. See *id.* The district court, while not contradicting the assertion that the Government had fraudulently concealed information from the Supreme Court, nevertheless concluded that the concealed information had been available to the plaintiffs as early as the late 1940s and held that the takings claim was barred by the statute of limitations. See 586 F. Supp. at 790. That holding was adopted without comment by the Federal Circuit Court of Appeals. See 847 F.2d at 779.

What is striking about the district court's opinion (and the Federal Circuit's brief affirmance of it) was its lack of contextual basis. Since the finding of military necessity by the Supreme Court and its presumption of military deference was the basis of the original *Korematsu* and *Hirabayashi* decisions, "nothing less than an authoritative statement by one of the political branches, purporting to review the evidence when taken as a whole, could rebut the presumption [of military deference] articulated in *Korematsu*." 782 F.2d at 251. In this case, the "authoritative statement" was the REPORT OF THE COMMISSION ON WARTIME RELOCATION AND INTERNMENT OF CIVILIANS, PERSONAL JUSTICE DENIED (1982); the report of the congressional commission, set up in 1980, to investigate the internment concluded that information had been withheld from the Supreme Court. See *id.* at 252.

Indeed, even the district court upon dismissing the case, was forced to acknowledge that a challenge to a finding by the Supreme Court was a "formidable obstacle," but noted that such a task had been accomplished previously by "diligent advocates." 586 F. Supp. at 788. However, what was left undiscussed by either the district court or the Federal Circuit was the effect of the political and social climate in the late 1940s or even in the early 1950s in terms of the reality of expecting the Supreme Court to be receptive toward Japanese Americans challenging Court findings made only a few years before. The political climate with respect to Japanese Americans being seen as foreigners had probably changed little, given that Asian Americans are still seen as foreigners today. See, e.g., Cynthia Kwei Yung Lee, *Beyond Black and White: Racializing Asian Americans in a Society Obsessed with O.J.*, 6 HAST. WOMEN'S L.J. 165, 174-86 (1995) (describing the stereotypes of Asian Americans as foreigners and outsiders).

Moreover, given what information was available in the 1940s—several internal government documents dismissing any Japanese-American security threat—it seemed eminently reasonable to expect that the Japanese-American community would assume that a challenge to the military deference rationale would be unsuccessful. See *Hohri*, 847 F.2d at 783 (Baldwin, J., dissenting)

bility of a multi-million dollar recovery and exerted even more pressure on Congress concerning the grant of reparations.²¹

The suspicion that the *Hohri* class action lawsuit was a motivating factor is not without support in the record. There is ample evidence that *Hohri* was very much on the minds of Congress during their debate over the bill.²²

Moreover, Yamamoto postulated that the "model minority" stereotype conveyed a number of silent messages which in turn conveyed the

("According to the trial court, the only obstacle in their way was a pair of Supreme Court decisions upholding [the Government's] actions and granting complete deference to the military's judgment. . . . At that time, however, with information available, they were destined for dismissal on the pleadings.") Indeed, two of the major cases cited by the district court of successful challenges to Supreme Court findings (*Brown v. Board of Education*, 347 U.S. 483 (1954) challenging *Plessy v. Ferguson*, 163 U.S. 537 (1896), and *Erie Railroad Co. v. Thompkins*, 304 U.S. 64 (1938) challenging *Swift v. Tyson*, 41 U.S. (16 Pet.) 1 (1842)) had intervals of decades between them, thus allowing the passage of time to temper the assumptions inherent in the earlier opinions.

Finally, there are compelling reasons to suggest that, in the first instance, the standard of review to decide the issues such as the incarceration of Japanese Americans should not be whether the presumption of military necessity can be overcome. Professor Yamamoto has urged that in cases where the Government imposes restrictions on civil liberties, except in circumstances of martial law, justifications of "national security" or "military necessity" should not replace the existing constitutional standard of review focusing on the right restricted. Eric K. Yamamoto, *Korematsu Revisited—Correcting the Injustice of Extraordinary Government Excess and Lax Judicial Review: Time for a Better Accommodation of National Security Concerns and Civil Liberties*, 26 SANTA CLARA L. REV. 1, 41-42 (1986). Indeed, the traditional standard of requiring a compelling state interest in cases of racial classification should encompass the question of whether there is a national security interest at stake. *See id.* at 42.

²¹ *See* Yamamoto, *supra* note 15, at 225 n.8; *see also*, LESLIE T. HATAMIYA, *RIGHTING A WRONG, JAPANESE AMERICANS AND THE PASSAGE OF THE CIVIL LIBERTIES ACT OF 1988* 177-78 (1993) (noting that the class action suit may have made H.R. 442 "appear to be a relatively inexpensive form of redress . . . [and] may have given representatives and senators an incentive to vote for H.R. 442"). For a full description of the motivation, organization, and effect of the class action lawsuit *see* WILLIAM H. HOHRI, *REPAIRING AMERICA, AN ACCOUNT OF THE MOVEMENT FOR JAPANESE-AMERICAN REDRESS* (1988).

²² *See* 134 CONG. REC. S4329 (daily ed. Apr. 20, 1988) (reference made by Sen. Stevens to "hundreds of billions of dollars" if a court awarded damages in terms of compensatory and punitive damages). *See id.* at S4399 (reference by Sen. Domenici to the ruling in district court that the *Hohri* class action had cause of action for losses). *See id.* at S4403-04 (reprinted statement of Richard K. Willard, Assistant Attorney General, Civil Division, United States Department of Justice, reviewing related litigation including the *Hohri* class action). *See id.* at S4408 (reference by Sen. Helms to the *Hohri* litigation as making legislation inappropriate). *See also* 133 CONG. REC. H7560 (daily ed. Sept. 17, 1987) (statement by Congressman Frank that the bill would be in effect a settlement of the *Hohri* class action lawsuit). *See id.* at H7571 (reference by Congressman Levine to *Hohri* lawsuit). *See id.* at H7586 (reference by Congressman Vento that the bill would "avoid court ordered reparations" if the *Hohri* class action were carried through to fruition). *See* 134 CONG. REC. H6312 (daily ed. Aug. 4, 1988) (reading of a letter by President Reagan into record by Congressman Frank supporting the bill and specifically citing the bill's assurance that "acceptance of compensation under the legislation fully satisfies claims against the United States based on the unique circumstances of the internment").

notion that if other minorities were the same as Japanese Americans and had overcome hardship without Government aid, they would be "rewarded" as well.²³ Indeed, these fears are also well-founded. Contemporaneous stories in the national and local popular press about how Asian Americans were a "model minority" were prevalent during the time of debate and passage of the redress bill.²⁴ It is no accident that there is ample evidence in the record of allusions to the "model minority" image of Asian Americans, and particularly of Japanese Americans.²⁵

Thus, Yamamoto, among others, has concluded that Japanese Americans had a responsibility to scrutinize their "model minority" status, challenge governmental excesses of power domestically and internationally, and address issues affecting people of color.²⁶ Monetary reparation for Japanese Americans comes with a responsibility—a re-

²³ See Yamamoto, *supra* note 15, at 238. Yamamoto points out that the model minority stereotype:

1. minimizes the deep-seated harm inflicted upon Japanese Americans by the government's misuse of power;
2. masks the problems of poor Asian communities and continuing discrimination against Asians;
3. excuses the government from acting affirmatively to eradicate discrimination and subordination by emphasizing self-sufficiency;
4. falsely privileges Asian Americans at the expense of others, driving a wedge between them and other groups of color. *Id.*

²⁴ See, e.g., Martin Kasindorf et al., *Asian Americans: A "Model Minority,"* NEWSWEEK, Dec. 6, 1982, at 39; Daniel A. Bell, *The Triumph of Asian-American; America's Greatest Success Story,* THE NEW REPUBLIC, July 15, 1985, at 24; Beverly McLeod, *The Oriental Express; Asian American Immigrants are Seen as a "Model" Minority on a Fast Track to Success,* PSYCHOLOGY TODAY, July, 1986, at 48; David Brand, *The New Whiz Kids: Why Asian Americans are Doing So Well, and What It Costs Them,* TIME, Aug. 31, 1987, at 42; Opinion/Editorial, *The Asian Family: Garden of Values,* THE SAN-DIEGO UNION TRIB., Feb. 4, 1986, at B6; Jim Spencer, *Why Fu Lien Can Read: For Asian Americans, Learning is a Family Obligation,* CHI. TRIB., Jan. 15, 1986, at C1.

²⁵ See 134 CONG. REC. S4328 (daily ed. Apr. 20, 1988) (reference by Sen. Hecht that many Japanese Americans were "multimillionaires today"); *Id.* at S4413 (reference by Sen. Helms to the fact that "wealthy Asian Americans" were opposing Representative Dan Lundgren's re-election because Lundgren opposed individual reparations). 133 CONG. REC. H7564 (daily ed. Sept. 17, 1987) (reference by Congressman Shumway—opposing bill—to Japanese Americans as "some of the most respectable, hard-working, loyal Americans that we have in this country"); *Id.* at H7569 (reference by Congressman Levine to Japanese Americans' "great contributions to our country" in "business, architecture, science, medicine, education" and stating that "[s]ome of our greatest scientists, educators and business leaders are Japanese-Americans"); *Id.* at H7581 (reference by Congressman Packard to the fact that "[o]ur Japanese friends don't need [the reparations money]"); *Id.* at H7594 (reference by Congressman Brown that some of Colorado's "finest citizens . . . some of our most honest, hardworking, and productive human beings" came from the relocation camps to Colorado); 134 CONG. REC. H6314 (daily ed. Aug. 4, 1988) (statement by Congressman Lehman stating that bill would serve to show "the respect we all have for the contributions that Japanese-Americans have made to our society.")

²⁶ See Yamamoto, *supra* note 15, at 240.

fusal to be used to excuse or perpetuate the racism that caused the internment in the first instance.²⁷

The actual content of that refusal, however, presents a more difficult and complex question. The refusal to be used to perpetuate subordination implies the existence of a shared political vision and a united political will. However difficult that consensus may be to achieve, part of the process of acting upon that responsibility lies in repudiating the political and ideological values that were implicit during congressional debate on the redress bill itself. Moreover, since influential economic forces benefitted from the relocation, Japanese Americans are compelled to be even more vigilant in scrutinizing and exposing connections to powerful economic interests when governmental decisions are made that have a negative impact upon the poor and people of color.²⁸

There is a particular irony about the debate on the redress bill. While there was general agreement, at least rhetorically, on the injustice of the internment, all of the glowing historical references centered around those contemporary political and ideological positions that *justified* and *accommodated* the decision to intern Japanese Americans.²⁹ Those who, at the time of internment, saw it for the injustice and outrage that it was and chose to dissent continue to be silenced and unheralded even during the process of acknowledging their prescience.

²⁷ See *id.* (citing *We Shall Not Be Used*, ASIAN L. REP., July 1990 at 7, reprint of address by Mari Matsuda).

²⁸ Part of the cry for Japanese-American internment was raised by "influential agriculturalists who had long cast their covetous eyes over the coastal webwork of rich Japanese-owned land, a superb opportunity had thus become theirs for the long-sought expulsion of an unwanted minority." MICHIE WEGLYN, *YEARS OF INFAMY: THE UNTOLD STORY OF AMERICA'S CONCENTRATION CAMPS* 36 (1976). Weglyn noted that although comprising only one percent of California's population, Japanese Americans controlled over 50 percent of the commercial truck crops before internment, such that the retail distribution of fruits and vegetables in Southern California "was already a firmly entrenched monopoly of Japanese Americans." See *id.* at 36-37. Weglyn explains:

It was a common practice among the Issei to snatch up strips of marginal unwanted land which were cheap: swamplands, barren desert areas that Caucasians disdained to invest their labor in. . . . The extraordinary drive and morale of these hard-working, frugal Issei who could turn parched wastelands, even marshes, into lush growing fields—usually with help from the entire family—became legendary. In the course of the years, notably during periods of economic crisis, a hue and cry arose of "unfair competition" and accusations that "the Japs have taken over the best land!"

Id. at 37; see also ROGER DANIELS, *PRISONERS WITHOUT TRIAL, JAPANESE AMERICANS IN WORLD WAR II* 13-14 (1993) (discussing the economic success and influence of the Japanese-American population in California and Washington before their internment and the subsequent backlash).

²⁹ It is somewhat analogous to condemning the Nazi invasion of France and celebrating the Vichy Government.

In essence, what Americans were being told by Congress to celebrate, by the giving of redress to Japanese Americans, was that patriotism—the kind of patriotism that does not resist injustice—gets rewarded.³⁰ Thus, the ideological baggage of the decision to redress the injustice of internment is the celebration of the “superpatriotic” response to it. It is this response—the ideological component of the model minority stereotype—and its celebration by Congress that contain great lessons and holds great dangers for Japanese Americans in particular and Asian Americans in general.³¹

Part I will review the ideological themes that were put forward by congressional supporters of the redress bill. These themes echoed specific political positions taken during the time of internment within the Japanese-American community that urged acquiescence to the relocation and counseled unquestioning obedience to all governmental action no matter how unjustified. Part II postulates how an uncritical adoption of the congressional attitude toward Japanese Americans and the normative values inherent in congressional approval of the redress bill implicate present day issues with respect to America's racial hierarchy and Asian Americans' place within it.

Finally, it should be emphasized at the outset that I have no criticism of the way organizations, individuals, and their families responded to relocation. My intent here is not to second-guess, with the benefit of perfect hindsight, the particular decisions that individuals and families made in response to relocation. I recognize how difficult it is for someone who did not experience it to understand the tenor

³⁰ This is not to ignore the various reasons why Senators opposed giving any redress for the violation of Japanese Americans' rights. Indeed, the very same racism equating Japanese nationals with Japanese Americans that caused the hysteria that led to the camps forty-five years earlier was still evident on the floor of both the Senate and the House in 1988.

Senator Helms proposed that no redress should be forthcoming to Japanese Americans until “the Government of Japan has fairly compensated the families of the men and women who were killed as a result of the Japanese bombing of Pearl Harbor on December 7, 1941.” 134 CONG. REC. S4398 (daily ed. Apr. 20, 1988). This racist equation was echoed in the House by Congresswoman Bentley who stated that she was opposed to the legislation because American prisoners of war “who were treated cruelly and frequently tortured, sometimes tortured to death” were more deserving. 134 CONG. REC. H6309 (daily ed. Aug. 4, 1988).

³¹ To put a celebration of a “super-patriotic” response to racial injustice in a contemporary context, it is instructive to note that Ward Connerly—the African-American millionaire who, as a Regent of California University and later as a leader for the effort to pass the eventually successful Proposition 209 California ballot measure which banned affirmative action in hiring, contracting and college admissions—has been described as “extravagantly patriotic.” See Barry Bearak, *Questions of Race Run Deep for Foe of Preferences*, N.Y. TIMES, July 27, 1997, at A1. It is reported that Connerly claims to recite the Pledge of Allegiance and the opening lines of the Declaration of Independence six to ten times a day. See *id.* at 20.

of the racial hysteria after Pearl Harbor and the dangers faced by the Japanese-American community. Nor do I seek to dispute assertions that the response of many in the Japanese-American community during times of war to prove their loyalty may have been the key to allowing congressional acceptance of redress. Rather, my purpose in reviewing the implications of the various positions taken by members of the Japanese-American community at the time of relocation is to seek out the lessons that hindsight might give to help ensure that internment, or its equivalent, will not happen again to Japanese Americans or anyone else.³² Thus, there should be no mistake that the major thrust of my concern and criticism lies not with the response of any victim of this injustice, but with the lessons that Congress wants us to draw from it.

I. IDEOLOGICAL THEMES AND POLITICAL POSITIONS

A. *The Tenor of the Congressional Debate*

Throughout congressional debate about the internment camps two consistent themes emerged—the injustice of the internment itself and the patriotic response of the Japanese-American community throughout the internment ordeal exemplified by their acquiescence and unqualified support of it. Indeed, the halls of Congress rang with fervent denunciations of the camps, the atmosphere of racial paranoia, and the scapegoating of Japanese Americans as profoundly un-American. Typical of the remarks in favor of the redress legislation were those of Congressman Rodino:

The preamble of the Constitution speaks eloquently about the blessings of liberty, the most basic and fundamental of our civil rights. All American citizens enjoy these rights and they expect to be protected from arbitrary imprisonment by the Federal Government. Some 40 years ago during World War II, the Federal Government without providing any due process under law, sent nearly 120,000 loyal American citizens and resident aliens of Japanese ancestry to remote internment camps. Many of these individuals, in the panic of sudden departures, lost their businesses, farms, and homes. Most of all they were deprived of their personal freedom. This great

³²The Act expressly states that one of its purposes is to "prevent" and "discourage the occurrence of similar injustices and violations of civil liberties in the future." 50 U.S.C. app. § 1989(3) & (6) (1990).

wrong to this day remains uncorrected. A truly great nation is worthy of its greatness when it recognizes that it has made mistakes. We now have the opportunity to recognize and to redress this grave injustice by the passage of [the redress bill].³³

Yet, despite this acknowledged injustice of the internment, there was much focus and laudatory praise of the acquiescent response to it. The sentiments of Congressman Yates were typical:

When the attack on Pearl Harbor came immediately the people of Japanese ancestry became targets for suspicion throughout the United States and Hawaii without cause or provocation. Japanese who had been living in California for many years were uprooted, homes destroyed, and they themselves placed behind barbed wire detention fences without a hearing or trial. . . . [T]his should have been enough to kill the spirit of a less responsible group of people. But the reply from the Japanese parents was to sent [sic] their children out from behind the wire fences into the American Armed Forces to fight the Nazis and the armed forces of their ancient homeland.³⁴

The reference to the heroism and success of the segregated Japanese-American Army unit, the 442nd Regimental Combat Team, is also typical.³⁵ The accolades were much deserved, and celebrated achievements about which all Americans, particularly Japanese Americans, are

³³ 133 CONG. REC. H7559 (daily ed. Sept. 17, 1987) (remarks of Congressman Rodino).

³⁴ 133 CONG. REC. H7582 (daily ed. Sept. 17, 1987).

³⁵ Indeed, the House number of the bill was H.R. 442. The accomplishments of the 442nd Regimental Combat Team are without peer: The 442nd, and its predecessor unit the 100th Infantry Battalion from Hawai'i, won seven Presidential Unit Citations, one Congressional Medal of Honor, 52 Distinguished Service Crosses, 588 Silver Stars, 9486 Purple Hearts, fought in seven major campaigns, and suffered 680 fatalities. See 134 CONG. REC. S4277 (daily ed. Apr. 19, 1988) (remarks of Sen. Adams); see also DANIELS, *supra* note 28, at 64 (noting that the 442nd was the "most decorated unit in the entire American Army" and included a winner of the Congressional Medal of Honor). Daniels observed that, "[i]n what may have been the supreme irony of their service, the men of the 442nd helped to liberate the Nazi concentration camp at Dachau even while their parents and other relatives were still held in American concentration camps." DANIELS, *supra* note 28, 64; see 134 CONG. REC. S4271 (daily ed. Apr. 19, 1988) (statement of Sen. Matsunaga about the 442nd); *id.* at S4323 (statement of Sen. Inouye); *id.* at S4324, S4330 (statement of Sen. Matsunaga); 133 CONG. REC. H7556 (daily ed. Sept. 17, 1987) (statement of Congressman Bonior); *id.* at H7582 (statement of Congressman Yates that no 442nd member deserted); 134 CONG. REC. at H6310 (daily ed. Aug. 4, 1988) (statement of Congressman Blaz); *id.* at H6312 (statement of Congressman Fazio); *id.* at H6313 (statement of Congressman Mineta); *id.* at H6314 (statement of Congressman Lehman).

proud.³⁶ Yet, the congressional debate was barren of favorable, indeed any, references to those heroic "others"—Japanese-American draft resisters who refused to fight for the United States until their families were freed from the camps.³⁷

An example of this resistance was the Fair Play Committee at Heart Mountain Relocation Center, which was organized to protest the violation of constitutional rights.³⁸ In March 1944, the committee publish-

³⁶ See 133 CONG. REC. H7580 (daily ed. Sept. 17, 1987) (statement of Congressman Hoyer noting that the 4500 men in the 442nd received 5300 Bronze Stars and 18,000 individual decorations from 18 allied nations including the French Croix de Guerre and the Italian Croce al Merito di Guerra).

³⁷ See HOHRI, *supra* note 21, at 172-75 (quoting hearing testimony of Jack Tono before the Commission on Wartime Relocation and Internment of Civilians (CWRIC) in New York on November 23, 1984). Tono testified that he, with a group of 62 other men, protested the military service of Japanese Americans while their families were in camp "to right the wrong which has been done to us Japanese Americans." *Id.* at 174.

In all, 315 internees were arrested for violations of Selective Service Laws. *See id.* at 6. They came from the camps at Topaz, Poston, Granada, Heart Mountain, Jerome, Minidoka, Rohwer, and Tule Lake. *See id.* at 14. Of the 315, 263 were convicted. *See id.* At Poston Relocation Center; approximately 200 young men were eventually indicted and tried for violations of the Selective Service Act for their refusal to be drafted to take up arms for freedom which neither they nor their parents enjoyed. *See* WEGLYN, *supra* note 28, at 126-27, 303 n.37.

During the congressional debate on the bill, Congressman Pelosi did acknowledge the efforts to overturn the wartime convictions of Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui. 134 CONG. REC. H6314 (daily ed. Aug. 4, 1988). Fred Korematsu, Gordon Hirabayashi, and Minoru Yasui all individually challenged the evacuation of Japanese Americans from designated military zones, based upon Executive Order 9066, signed by President Roosevelt on February 19, 1942. All were arrested and convicted of curfew and evacuation violations. Their cases went to the Supreme Court and all were denied justice in *Korematsu v. United States*, 323 U.S. 214 (1944); *Yasui v. United States*, 320 U.S. 115 (1943); and *Hirabayashi v. United States*, 320 U.S. 81 (1943). The other wartime legal challenge to relocation was *Ex Parte Endo*, 323 U.S. 283 (1944), which granted her writ of *habeas corpus* releasing her from detainment and held that the War Relocation Authority (WRA) could not detain loyal citizens. However, the War Department was secretly notified of the Supreme Court's *Endo* decision 10 days before it was announced, and it rescinded the exclusion and detention orders one day before the decision was handed down. *See* HATAMIYA, *supra* note 21, at 24.

Much has been written about the struggle of Korematsu, Yasui, and Hirabayashi to have their convictions reversed on writs of *coram nobis*, *Hirabayashi v. United States*, 828 F.2d 591 (9th Cir. 1987), *Korematsu v. United States*, 584 F. Supp. 1406 (N.D.Cal. 1984); Yasui died before his petition could be finally adjudicated, *see* IRONS, *infra* at 29-30, as well as the critical roles played by activists, lawyers, and scholars. *See, e.g.*, PETER IRONS, JUSTICE DELAYED: THE RECORD OF THE JAPANESE AMERICAN INTERNMENT CASES (1989). It goes without saying that both their courageous resistance to the internment as well as their fight to seek judicial redress of their convictions were major inspirations for the redress movement. *See* HATAMIYA, *supra* note 21, at 171-72. Hatamiya observed that the successful *coram nobis* petitions, which had shown the deliberate suppression of evidence by the Government in 1943-44 proving that no threat of Japanese-American espionage or sabotage existed, had a major educational and public relations impact. *See id.* at 170-72. It "wiped away any legal basis for a nay vote on the redress legislation on the grounds that there had been at least some military necessity for the orders." *Id.* at 172.

³⁸ *See* HOHRI, *supra* note 21, at 13.

ed a leaflet protesting the injustice of ordering Japanese Americans to join a segregated unit in the Army without restoration of their constitutional rights.³⁹ The Committee declared:

We are not being disloyal. We are not evading the draft. We are all loyal Americans fighting for JUSTICE AND DEMOCRACY RIGHT HERE AT HOME.⁴⁰

The seven leaders of the Heart Mountain draft resistance movement, Kiyoshi Okamoto, Paul Nakadate, Ben Wakaye, Ken Yanagi, Frank Emi, Minoru Tamesa, and Sam Horino were convicted later that year on draft conspiracy charges.⁴¹ Yet these men and others, who also sacrificed for hallowed democratic principles, went unnoticed during the congressional debate.

The congressional decision to celebrate the "blind obedience" response to injustice, rather than resistance to it, would be merely short-sighted if done in isolation. However, this perspective is consistent throughout the congressional debate and sends a clear message about what lessons Congress and President Reagan, who later signed the bill, hoped the law would teach Japanese Americans and people of color in general.

Reference to the redress bill, both before and after its passage, is striking in one unique aspect. There is an express and consistent connection made between the bill and the political perspective of Mike Masaoka, the Executive Secretary and spokesperson of the Japanese American Citizens League (JACL) at the time of the internment.⁴² This is significant because at the time of the internment, the position of the

³⁹ *Id.* at 33.

⁴⁰ *Id.* (emphasis in original).

⁴¹ *See id.* at 13; *see also* DANIELS, *supra* note 28, at 64 (noting that 85 inmates of Heart Mountain relocation camp refused military induction on the basis that as long as there was internment, there was no obligation to serve in the military). Daniels notes that of the 385 men from Heart Mountain who entered the army, 11 were killed and 52 were wounded. *See id.* There were 3600 men who entered the army directly from the camps, of which at least 172 were killed in action, 590 were wounded and 15 declared missing. *See id.*

In 1990, the JACL adopted a resolution recognizing that:

[T]hose Japanese American draft resisters who declared their loyalty to their country but were also dedicated to the principle of defending their civil rights, were willing to make significant sacrifices to uphold their beliefs . . . in a different form from those who sacrificed their lives on the battlefields; and that they too deserve a place of honor and respect in the history of Americans of Japanese ancestry.

Hokubei Mainichi, *JACL Resolution Recognizes Draft Resisters*, THE CHICAGO SHIMPO, Aug. 15, 1990, at 1; *see also* ASIANWEEK, June 29, 1990, at 12.

⁴² *See, e.g.*, 134 CONG. REC. H6308-09 (daily ed. Aug. 4, 1988). In fact, Congressman Matsui inserted Masaoka's "Japanese American Creed," written in 1941, into the record:

JACL, and Masaoka in particular, was one of complete and uncritical support for it. It was the JACL that urged unquestioning compliance with internment and actively cooperated with the Government in suppressing any dissent within the Japanese-American community.⁴³

Typical of the sentiments expressed about Masaoka and the activity of the wartime JACL are Congressman Edwards' remarks on the

I am proud that I am an American citizen of Japanese ancestry, for my very background makes me appreciate more fully the wonderful advantages of this Nation. I believe in her institutions, ideals and traditions; I glory in her heritage; I boast of her history; I trust in her future. She has granted me liberties and opportunities such as no individual enjoys in this world today. She has given me an education befitting kings. She has entrusted me with the responsibility of franchise. She has permitted me to build a home, earn a livelihood, to worship, think, speak, and act as I please—as a free man equal to every other man.

Although some individuals may discriminate against me I shall never become bitter or lose faith, for I know such persons are not representative of the majority of the American people. True, I shall do all in my power to discourage such practices, but I shall do it in the American way: above board, in the open, through courts of law, by education, by proving myself to be worthy of equal treatment and consideration. I am firm in my belief that American sportsmanship and attitude of fair pay [sic] will judge citizenship and patriotism on the basis of action and achievement, and not on the basis of physical characteristics.

Because I believe in America, and I trust she believes in me, and because I have received innumerable benefits from her I pledge myself to do honor to her at all times and in all places, to support her Constitution, to obey her laws, to respect her Flag, to defend her against all enemies, foreign or domestic, to actively assume my duties and obligations as a citizen, cheerfully and without any reservations whatsoever, on the hope that I may become a better American in a greater America.

See *id.* Within two years of the articulation of the creed, Japanese Americans were behind barbed wire. See DANIELS, *supra* note 28, at 21.

Masaoka was also eulogized on the floor of Congress after his death in 1991. See 137 CONG. REC. E2854-02 (daily ed. Aug. 2, 1991) (statement by Congressman Dixon). See 137 CONG. REC. H5890-901, H5885-86 (daily ed. July 25, 1991) (statement by Congressman Minetta); *id.* at H5891 (statement by Congressman Abercrombie); *id.* at H5891-902 (statement by Congressman Frank); *id.* at H5892-906 (statement by Congressman Yates); *id.* at H5896 (statement by Congressman Levine). See also 137 CONG. REC. H5896-97 (daily ed. July 25, 1991) (statement by Congressman Berman); *id.* at H5897 (statement by Congressman Lehman); *id.* (statement by Congresswoman Boxer); *id.* (statement by Congressman Lantos); *id.* at E2726-27 (statement by Congressman Mavroules); *id.* at H5886-87 (statement by Congressman Edwards); *id.* at H5887-88 (statement by Congressman Matsui); 137 CONG. REC. S9099 (daily ed. June 28, 1991) (statement by Sen. Inouye). In each of these eulogies, allusions were made to Masaoka's leadership in the passing of the Civil Liberties Act of 1988. For a discussion of the positions taken by wartime JACL leaders such as Masaoka, on the Civil Liberties Act of 1988, see *infra* notes 84-86 and accompanying text.

It should be noted that this tribute came after the original funding was appropriated on November 21, 1989 when President Bush signed H.R.2991 establishing redress as an entitlement program. However, it was not until March 1992 that amendments were introduced in the House and Senate to extend redress benefits to an additional 20,000 eligible recipients who would not have received payment under the original entitlement program. See HATAMIYA, *supra* note 21, at 188.

⁴³ See *infra* notes 68-85 and accompanying text.

floor of Congress on December 21, 1987.⁴⁴ Edwards' ostensible purpose was to put into the record the news of the recent publication of Masaoka's autobiography, "They Call Me Moses Masaoka."⁴⁵ In the beginning of his remarks, Edwards alluded to the fact that the House of Representatives had recently approved the Civil Liberties Act and that it was only awaiting approval by the Senate.⁴⁶ He then went on to recognize Masaoka's participation in the redress issue itself.⁴⁷ Quite remarkably, he then devoted a substantial portion of his remarks to a ringing endorsement of the political positions of Masaoka and the JACL during the period of internment:

Masaoka explains in considerable detail the reasons for JACL's controversial cooperation in the initial evacuation orders, noting that even with the benefit of almost half a century of hindsight, he does not know of any knowledgeable individual, evacuee or others, who has advanced a viable, practical, and effective alternative to their reluctant and difficult but patriotic decision. As a former FBI agent who also was very much aware of the true mood and atmosphere of the situation on the Pacific Coast, however, I can vouch for the fact that there appeared to be no other pragmatic or realistic choice but to comply with the military, which those of Japanese ethnicity did without violence or terrorism.⁴⁸

What is noticeably absent in Edwards' defense of Masaoka's historical role is any reference to the reasons why JACL's cooperation was

⁴⁴ See 133 CONG. REC. H11938-12003 (daily ed. Dec. 21, 1987).

⁴⁵ *Id.*

⁴⁶ See *id.*

⁴⁷ *Id.*

⁴⁸ *Id.* It should be noted that my purpose in looking at Masaoka's political positions, and its reflection in the JACL's activities during the internment, is not specifically to ignore either Masaoka's or the JACL's achievements. Indeed, many credit Masaoka and the JACL with being a significant force in the final granting of citizenship rights for the Issei in 1952. See WECLYN, *supra* note 28, at 268 (calling the achievement of citizenship rights a "veritable tour de force for the Japanese American Citizens League . . . achieved largely through the intensive lobbying efforts of its Washington representative, Mike Masaoka"). Moreover, this piece is also not primarily meant to criticize the internment position taken by the JACL and its supporters, although there are many troubling questions about the JACL's wartime activities. That piece of history is over.

Instead, this article highlights the political lessons that may be drawn from the experience in order to avoid the same kind of tragedy happening again, not only to Japanese Americans but to any other people. Moreover, it recognizes that while presently there are no official "internment camps," there are conditions for many people of color, whether it be in urban ghettos, on "reservations," or in penal institutions, that are the result of social, political, and economic barriers that may be even more difficult to surmount than the barbed wire ones which held my parents and relatives captive.

"controversial" in the first instance. Indeed, it only hints at other contemporaneous perspectives that existed within the Japanese-American community at the time.

B. *Resistance to Incarceration*

The relocation of the entire Japanese-American population of the West Coast did not proceed without meeting resistance. In fact, "over 100 Japanese-Americans deliberately violated at least one of the orders."⁴⁹ In addition to resistance to the draft, there were periodic strikes and even riots within the internment camps; the Army's suppression of these actions resulted in numerous casualties and fatalities.⁵⁰ Numerous acts of overt mass resistance within the internment camps have been documented:

(1) a farm strike at Tule Lake Relocation Center on August 15, 1942, over inadequate food rations, work speed-up, wages and work clothing allotment;⁵¹

(2) a construction strike at Tule Lake Relocation Center on September 3, 1942, over layoffs without pay, reduction in the Japanese-American crew in favor of white crew members, and lack of clothing;⁵²

(3) a petition campaign resulting in 9,000 signatures and a mess hall "slowdown" at Tule Lake Relocation Center on October 12, 1942, over food distribution and mess hall conditions;⁵³

(4) a general strike at Poston Relocation Center on November 15, 1942, over the arrest of two camp residents suspected in the beating of FBI informers;⁵⁴

(5) a riot at Manzanar Relocation Center on December 5, 1942, over arrests resulting from the beating of a suspected "inu" during which machine guns were fired and gas bombs were thrown at camp residents by soldiers, resulting in ten wounded and two killed;⁵⁵

⁴⁹ See HATAMIYA, *supra* note 21, at 23.

⁵⁰ William Hohri articulates three attempts at redress during the camps: (1) the attempt by James Omura in Colorado to organize legal action against the United States to restore civil and citizenship rights for Japanese Americans in 1942; (2) a letter written from inside the camps by Joseph Y. Kurihara in 1943 in which he proposes \$5000 for "each and every evacuee"; and (3) Kiyoshi Okamoto and James Omura leading the draft resistance at Heart Mountain Relocation Camp, and later in 1946 Okamoto establishing "The Fair Rights Committee" to seek restitution for the internees. See HOHRI, *supra* note 21, at 28-34.

⁵¹ See DOROTHY S. THOMAS & RICHARD S. NISHIMOTO, *THE SPOILAGE: JAPANESE-AMERICAN EVACUATION AND RESETTLEMENT DURING WORLD WAR II* 41-42 (1969).

⁵² See *id.* at 43.

⁵³ See *id.*

⁵⁴ See *id.* at 45-49. JACL members were often suspected by camp residents of being informers or "inus," the literal Japanese translation of which is "dog." See *id.* at 45-52.

⁵⁵ See *id.* at 49-51; see also WEGLYN, *supra* note 28, at 121-25.

(6) a strike by a coal crew at Tule Lake Relocation Center on October 7, 1943, over working conditions;⁵⁶

(7) a strike by farm workers at Tule Lake Relocation Center on October 15, 1943, over dangerous working conditions which resulted in an accident injuring twenty-nine workers and killing one;⁵⁷

(8) a hunger strike by 200 detainees at Tule Lake Relocation Center on December 31, 1943, over their arrest as a result of the imposition of martial law at Tule Lake;⁵⁸

(9) a mass demonstration at Tule Lake Relocation Center on November 1, 1943, over general conditions including racism of Caucasian personnel toward camp residents.⁵⁹

Indeed, the attitude among many camp inmates was one of disquiet and resistance over many issues; disagreement over the extent to which the community should cooperate with the Government was both widespread and contentious. This cleavage over the reaction to the internment might be best illustrated by the reaction to the administration of the "Loyalty Oath" to internees who were seventeen years old or older.⁶⁰ Even putting aside the outrageous insensitivity of the oath-taking requirement, responding to the Loyalty Oath questions created unfathomable community pressures for the incarcerated Japanese American population.⁶¹

The Loyalty Oath questions permitted only "yes" or "no" answers. However, irrespective of their political views, the fact remained that "yes" answers to the loyalty questions for the Issei, who were not citizens of the United States, left them with the possibility of becoming people with no country.⁶² Some felt that a "yes" answer could have been a trap

⁵⁶ See THOMAS & NISHIMOTO, *supra* note 51, at 113.

⁵⁷ See *id.* at 114-15.

⁵⁸ See *id.* at 174.

⁵⁹ See WEGLYN, *supra* note 28, at 162.

⁶⁰ See *id.* at 136-40. In actuality, the "Loyalty Oath" consisted of two identical questions in two different forms—one for draft age Nisei, the "Statement of United States Citizenship of Japanese Ancestry," and the other for Issei and female Nisei, "Application for Leave Clearance." They were as follows:

No. 27. Are you willing to serve in the armed forces of the United States on combat duty, wherever ordered?

No. 28. Will you swear unqualified allegiance to the United States of America and faithfully defend the United States from any or all attack by foreign and domestic forces, and forswear any form of allegiance or obedience to the Japanese emperor, to any other foreign government, power or organization?

See *id.*

⁶¹ Incredibly, this oath was administered to a population that had just been uprooted, terrorized, and unjustly incarcerated by their Government. The action by the WRA has been characterized as one of "incredible stupidity" and "colossal folly." DANIELS, *supra* note 28, at 68; WEGLYN, *supra* note 28, at 135.

⁶² See WEGLYN, *supra* note 28, at 136-37.

to identify Japan sympathizers since it could be interpreted as an admission of prior allegiance to Japan.⁶³ A "no" answer to question 27 with respect to armed forces service could reflect less on disloyalty than a repugnance for incarceration.⁶⁴ Indeed, complying with the evacuation itself could be seen as the ultimate test of loyalty.⁶⁵ Many wondered whether the "yes-yes" responders were going to be "rewarded" by being drafted, while the "no-no" responders were to be "rewarded" with continued incarceration or worse.⁶⁶ Indeed, some Issei feared that a "yes" response would get them thrown out of camp without resources.⁶⁷

In any event, almost 9,000 residents answered question 28 "no," and were classified as "disloyal" although the precise reasons for that answer probably could not be neatly assumed or categorized.⁶⁸ Those deemed "disloyal" were transferred to Tule Lake Relocation Center, while those deemed "loyal" at Tule Lake were transferred to other camps.⁶⁹ The aftermath of this cleavage was devastating:

On the surface, this innocuous questionnaire resulted in the transfer of 18,711 evacuees between centers for the purpose of segregation and in 4,224 cases, eventual repatriation. . . . In actuality, the "Loyalty Oath" served to segregate generation against generation, religion against religion, family against family, and wreaked havoc on households and individuals—a veritable civil war with no winners.⁷⁰

Thus, the tributes in connection to the political positions and choices of Masaoka and the JACL are more than just recognition of an individual's or an organization's contributions to his country. Given the history of contemporaneous and relatively substantial resistance to internment—a governmental action which even the Government now concedes was without justification—the extraordinary recognition and official Government imprimatur of what some would consider the extreme positions taken by the JACL and its spokesperson Masaoka require greater scrutiny.⁷¹

⁶³ See *id.* at 137-38.

⁶⁴ See *id.*

⁶⁵ See *id.*

⁶⁶ See *id.*

⁶⁷ See DANIELS, *supra* note 28, at 69.

⁶⁸ See *id.*

⁶⁹ See *id.* at 70.

⁷⁰ HOHRI, *supra* note 21, at 136 (quoting the testimony of Lawson Inada, professor of English at Southern Oregon College and well regarded poet before the Commission on Wartime Relocation and Internment of Civilians).

⁷¹ It should be noted at the outset that the members of the JACL such as Edison Uno,

C. *The Wartime Japanese American Citizen's League Under Masaoka*

The wartime JACL was a group of young Nisei struggling to cultivate a leadership role in the Japanese-American community.⁷² Before the evacuation, it was the Issei who provided the Japanese-American community's leadership and stability.⁷³ The JACL's overall political agenda was one of "super-patriotism" in the face of racial and economic persecution.⁷⁴ Shortly after Pearl Harbor, the JACL moved toward "formal collaboration" with the Federal Bureau of Investigation to "inform on all individuals who appeared to be a danger."⁷⁵ In practically every instance the JACL stood in vocal and active opposition to Japanese-American resistance to internment, and enthusiastically endorsed and supported the actions of the Government with respect to internment and suppression of dissent:

(1) members of the JACL leadership were involved in identifying noncitizen Issei and Kibei community leaders to the FBI and Office of Naval Intelligence before Pearl Harbor;⁷⁶

(2) members acted as Government informants to identify those they "suspected of disloyalty" before the evacuation;⁷⁷

Raymond Okamura, and William Hohri have consistently played an active role in pushing the organization to take stands on issues of equity and racial justice since the 1960s. Indeed, it was Edison Uno and other JACL members who first proposed the idea of redress. See HOHRI, *supra* note 21, at 37-38.

⁷² See WEGLYN, *supra* note 28, at 44-45. There is some evidence that although the JACL leadership had claimed to "speak for" the Japanese-American community during the internment, its actual membership barely reached 2000. This information is contained on page 65, § IIB of a report compiled in 1989 by Deborah Lim, an attorney and Asian Studies instructor at San Francisco State University who was hired by the JACL to research the wartime activity of the organization. See DEBORAH K. LIM, THE LIM REPORT 65 (1990); see also Muto, *Controversy Over Report on JACL Wartime Role*, ASIANWEEK, Nov. 23, 1990, at 1. Her mandate was the result of a resolution passed at the JACL's 1988 national convention to have the organization apologize for some of its actions during World War II. See Muto, *supra*. In 1990, Lim completed her research and delivered a report ("The Lim Report") which was highly critical of the organization's activities, but the JACL released only a summary of her report after deleting most of the critical content at its convention in 1990. See Clifford Uyeda, *JACL's Report on Dissidents*, PAC. CITIZEN, Aug. 31, 1990, at 5. In 1994, the organization agreed to release the original report. Takeshi Nakayama, *Lim Report to be Released at National Convention*, RAFU SHIMPO, May 24, 1994. Moreover, I have looked at much of the original source material on which the "Lim Report" based its conclusions.

⁷³ See PETER IRONS, JUSTICE AT WAR 77 (1983).

⁷⁴ See *id.*; see also WEGLYN, *supra* note 28, at 44-45.

⁷⁵ See IRONS, *supra* note 73, at 79. The Anti-Axis Committee was formed in 1941 by the Southern California JACL chapters to work with the FBI and governmental agencies to inform on the Japanese-American community. See *id.* In Seattle and San Francisco similar groups, called "Emergency Defense Councils," were formed. THE LIM REPORT, *supra* note 72, at § IB at 12.

⁷⁶ THE LIM REPORT, *supra* note 72, at § IA at 3-11.

⁷⁷ *Id.*

(3) members acted as Government informants inside the internment camps identifying "dissidents" and "disloyals";⁷⁸

(4) the JACL leadership, including Masaoka, rather than advocating for Japanese-American interests to the War Relocation Authority (WRA), the governmental agency responsible for the maintenance of the camps, became actual employees of the WRA in exchange for freedom of movement;⁷⁹

(5) the JACL urged that charges of sedition be brought against the draft resisters of Heart Mountain;⁸⁰

(6) the JACL considered any "no" answer to the Loyalty Oath be considered an expression of disloyalty irrespective of the reason for the "no" answer.⁸¹

In fact, there is evidence to the effect that in his capacity as Executive Secretary for the JACL, Masaoka proposed a "suicide battalion" of Japanese Americans whose loyalty would be assured by having families and friends held by the Government as hostages.⁸² Even more disturbing was Masaoka's proposal in 1942 to recommend to the Government that Japanese Americans be branded, stamped, and put under the supervision of the Federal Government; be placed in "labor concentration camps" to be utilized as "cheap labor" in the sugar beet fields; and that internees be used for road building in Western States in return for resettlement.⁸³

That this extreme "superpatriotic" response to an acknowledged racial injustice would be celebrated by Congress is troubling.⁸⁴ Yet, in the clear vision of hindsight, this blindly obedient response on the part of the JACL could be simply written off as an understandable reaction to extreme and dangerous conditions. However, long after the intern-

⁷⁸ *Id.* at § IIC at 71-75.

⁷⁹ *Id.* at § IIB at 56-57.

⁸⁰ *Id.* at § IIE at 88. Saburo Kido, the JACL president during 1940-41, wrote in the *Pacific Citizen*, the newspaper of the JACL, in reference to the Fair Play Committee at Heart Mountain, "Any person who incites or encourages any citizen to evade the draft is assuming a grave responsibility. It is needless to say the offense constitutes sedition." *Id.*

⁸¹ THE LIM REPORT, *supra* note 72, at § IID at 81. The conclusions reached by the Lim Report were circulated to the Japanese-American community after the successful redress campaign and caused a great controversy. See, e.g., Frank Abe, *JACL Study Critical of Its Own Wartime Policies*, THE INT'L EXAMINER, June 20, 1990, at 7; see also Frank Abe, *Report Says Wartime JACL Leaders Collaborated*, THE RAJU SHIMPO, June 12, 1990, at 1.

⁸² See WEGLYN, *supra* note 28, at 38.

⁸³ THE LIM REPORT, *supra* note 72, at § ID at 36.

⁸⁴ Ironically, given the close cooperation of the JACL with the FBI, it is remarkable to discover that the agency did not return the JACL's fealty to them. A wartime FBI survey of the Japanese community within 10 relocation camps indicated their view was that:

One of the greatest causes for internal disorder has been perhaps the Japanese-

ment and World War II were over, the apologia for oppressive governmental action continued to be a consistent response from the old-line JACL leadership headed by Masaoka. For example, although the JACL, pushed by its more progressive caucuses and chapters, had adopted a resolution in opposition to the Vietnam War by 1972, only two years earlier pro-Vietnam War sentiments had been common for the old-line JACL activists.⁸⁵ Even more revealing is the kind of stance taken by Masaoka during the early campaign for redress itself.

In the early 1970s, the JACL, propelled by the efforts of members like Edison Uno, adopted a series of resolutions in favor of redress legislation and in 1976 formed the National Committee for Redress.⁸⁶ However, in 1979, the JACL adopted a position supporting legislation for a study commission rather than supporting redress legislation itself.⁸⁷ As such, the JACL did not support the first redress legislation

American Citizens League. The members of the Japanese-American Citizens League have been very outspoken in proclaiming their loyalty to the United States. It is, of course, commendatory that these individuals would be loyal to this country; however, there are some indications that their views are as political as patriotic. It is the consensus of opinion among the Japanese that the Japanese-American Citizens League, in collaboration with the United States Government, "sold them out" and did not put up a fight to block relocation. This feeling is so predominant that the Japanese now refer to Mike Masuoko [sic], the national president of the Japanese-American Citizens League, as Moses Masuoko [sic], stating that he "led them out of California" [sic]. Many of the individuals who receive beatings have been members of the Japanese-American Citizens League, and as such are individuals who either cooperated with the Government agencies or were active in sponsoring loyalty programs.

Id. at § IIC at 70-71.

⁸⁵ See Official Minutes of the Japanese American Citizens League 22nd Biennial National Convention, at 59-60 (on file with author) (urging "rapid" end of United States participation in the war); see also HOHRI, *supra* note 21, at 37-38. Hohri describes the attempt by "sansei radicals" in 1970 at the JACL national convention to push the JACL to take positions against the Vietnam War and to take more aggressive positions on civil rights issues, and the "outrage" by many members of the organization. See *id.* As one of those "sansei radicals," I remember, if memory serves, that Masaoka was reported as not being pleased with our demonstrations.

⁸⁶ See HOHRI, *supra* note 21, at 38, 41.

⁸⁷ See *id.* at 44. The JACL retreat was an impetus for the creation of other redress organizations such as the National Council for Japanese American Redress (NCJAR). William Hohri, JACL member and one of the founders of NCJAR, recalls that the reasons given for the retreat were "hauntingly similar" to the reasons given "for the JACL's collaboration with the government's program of exclusion and detention. Were we being sold down the river again?" *Id.* at 45. He muses:

[T]he accommodationist role of the JACL is both symbolic and real. The symbol is expressed by terms such as "Quiet American" and "Model Minority". . . . That's the direction the JACL has urged upon [Japanese-Americans] with its motto, "Better Americans in a Greater America." The motto's corollary, also adopted by the JACL was "The Greatest Good for the Greatest Number." The motto and corollary implied that "Better Americans" are more "American," and more "American" was what the

introduced by Congressman Lowry in November, 1979.⁸⁸ Indeed, at the Senate hearings held on the redress issue on March 18, 1980, Masaoka proposed an alternative-to-redress approach that would not compensate individual victims.⁸⁹ In a crowning irony, he "argued passionately against redress for renunciants and draft resisters."⁹⁰

Thus, Congress expressed its solicitude for the very people whose political views accommodated and, indeed, helped to exacerbate the very injustice that Congress condemned by the redress bill. This congressional solicitude sends an unambiguous message—there are rewards for acquiescence.

In a 1997 conference held at the University of California Los Angeles entitled "Voices of Japanese American Redress," several themes emerged, as reported by the community press. The conference was sponsored primarily by the Civil Liberties Public Education Fund, and its purpose was, as one organizer stated, "to see the broad spectrum of ideas that still exists among the different individuals that were involved in the redress movement."⁹¹ One theme reported was that the redress movement was an historic grassroots event.⁹² Another theme that emerged was that redress could not have been accomplished without the "patriotism" exhibited by the Japanese-American community in response to their incarceration.⁹³

majority of Americans were: white Americans. Japanese-Americans were to become as much like white Americans as possible; failing that, they were to be quiet and accommodating.

Id. at 128–29.

The other major group formed for redress purposes was the National Coalition for Redress/Reparations (NCRR) in 1980. *See* HATAMIYA, *supra* note 21, at 142. The various formations and their different strategies to attain redress are beyond the scope of this article. However, like any political movement, different views emerged. For some perspectives of these differences, *see* HOHRI, *supra* note 21, at 142–45; HATAMIYA, *supra* note 21, at 138–42.

⁸⁸ H.R. 5977, 96th Cong. (1979) ("The Lowry Bill"). The Lowry Bill allocated \$15,000 per internee. This bill was opposed in testimony by Masaoka before the House Judiciary Committee on June 2, 1980. *See* HOHRI, *supra* note 21, at 61, 76–77.

⁸⁹ *See* HOHRI, *supra* note 21, at 64.

⁹⁰ *Id.* at 118.

⁹¹ Takeshi Nakayama, *Grassroots Lobbying Created Legitimacy for Redress*, THE RAFU SHIMPO, Sept. 18, 1997, at 1 (quoting conference organizer Dr. Mitchell Maki) [hereinafter *Grassroots Lobbying*].

⁹² Martha Nakagawa, *Redress Revisited*, THE RAFU SHIMPO, Sept. 12, 1997, at A1 (calling it "one of the greatest grassroots effort in modern American history").

⁹³ Representative Robert Matsui stated:

There could be no question about our patriotism after people like Rudy [Tokiwa], who was locked up in camp went to war for the U.S. I don't think redress would have happened without the 442nd, without those who gave up their lives and gave themselves for the war effort while their families were interned.

The reported discussions around this issue were disturbing because there did not appear to be any focus on the implications of and the dangers inherent in the notion that despite the clear injustice of the incarceration, congressional redress would not have been possible unless there had been a history of acquiescence to it. Instead, there was only heated discussion on what the appropriate role of the JACL should have been at the time of internment.⁹⁴

Whatever the merits of each position in the debate, this particular argument obscures and detracts from discussion of a much larger and more troubling issue. Even if one assumes that the JACL accommodationist course was a "better" alternative to outright resistance to the incarceration, the question remains whether that response should be what we, as a nation and community, celebrate and commemorate when we look back on the experience. The fact that segments of the wartime Japanese-American community either felt or were actually forced to cooperate enthusiastically with their captors should be viewed as a source of national tragedy *as well* as a testament to the Japanese-American community's will to endure and prevail. Should not the lesson that we as a nation learn from the experience of Japanese Americans be that when injustice happens we should listen better to the dissenters and the protesters against that injustice? With that as our national lesson, we as a society are better assured that, in the future, no other community will be forced to humiliate themselves in the face of their oppression in order to survive.

Moreover, deflecting the debate away from that issue to one solely over the wartime role of the JACL forces a defense of their wartime position which reinforces a "superpatriotic" accommodationist stance in the present. In response to a position articulated at the conference that the JACL sacrificed long-term Japanese-American interests by capitulation, Fred Hirasuna, a JACL member from central California, wrote:

Those young people who volunteered or were willingly drafted for military service, in spite of constitutional wrongs committed against them and their families by their own government, showed more real courage and more commitment to the overall cause of Japanese Americans than any other single

Takeshi Nakayama, *Rare Victory of Spirit Over Numbers*, THE RAJU SHIMPO, Sept. 16, 1997, at A2.

⁹⁴There are reports of a heated exchange between Frank Chin and Fred Hirasuna. Chin took the position that the JACL failed to defend Japanese Americans during incarceration, and Hirasuna took the position that cooperation with the Government was the only viable alternative at the time. See *Grassroots Lobbying*, *supra* note 91, at 1.

group, more than the Heart Mountain [draft resister] group.⁹⁵

However, the issue should not be framed in terms of who showed more courage, but rather by asking why people were forced to make that kind of a choice, and why Congress has decided to celebrate one choice but not the other. Japanese Americans should not allow ourselves to be placed in the position of accepting reparations at the same price that we were asked to pay when we were incarcerated in the first place—accommodation of governmental racial injustice. Aside from its collateral pernicious effects, it places us back at our original humiliation.⁹⁶

II. THE DANGER OF POLITICAL ACCOMMODATIONISM FOR ASIAN AMERICANS

The carrot of political reward for political accommodation is a particular temptation for Asian Americans, for Asian Americans find themselves in a peculiar place in the developing racial hierarchy.⁹⁷ If Asian Americans accept their model minority role, it no doubt will come with the “reward” of higher racial status. As John O. Calmore has explicitly predicted:

I do believe, however, that dominant America will attempt to situate Asians, Pacific Islanders, and Latinos squarely within its efforts to determine who will be “white” in the twenty-first century.⁹⁸

In the search for more sophisticated paradigms to understand and dismantle all forms of racial subordination, it is imperative not to allow an exploration of the subtlety of the various paradigms to diffuse the primary attack upon the overall operation of white supremacy.⁹⁹

⁹⁵ Letter to the Editor, *THE RAFU SHIMPO*, Sept. 27, 1997, at 3.

⁹⁶ Since my source for the goings on at the UCLA conference are taken from press accounts, I am reluctant to comment upon issues that may have been unaddressed. However, it was reported that although there were discussions of unfinished work (i.e. the cases of Latin American Japanese who were incarcerated), there was no report of discussions about how and whether Japanese Americans could participate in and support the claims of other groups such as Hawaiians and African Americans for reparations and racial redress. See Nakagawa, *supra* note 92, at A1.

⁹⁷ For a discussion of the “buffer” role Asian Americans often play in contemporary American racial politics, see *infra* notes 105–06 and accompanying text.

⁹⁸ John O. Calmore, *Exploring Michael Omi's “Messy” Real World of Race: An Essay for “Naked People Longing to Swim Free,”* 15 *LAW & INEQ. J.* 25, 63 (1997) (quoting Letters to the Editors), in *RACE TRAITOR* 269, 275 (Noel Ignatiev & John Garvey eds., 1996).

⁹⁹ Eric K. Yamamoto, *Critical Race Praxis: Race Theory and Political Lawyering Practice in*

Professor Eric Yamamoto has articulated an analytical framework for understanding the operation of dominance and subordination outside the old Black/White paradigm without sacrificing the primary focus on white supremacy.¹⁰⁰ According to Professor Yamamoto, situated group power involves four understandings:

(1) simultaneity (racial group can be viewed as oppressed and oppressive simultaneously depending on power relationships involved);

(2) positionality (focuses on actor's "power position within a given context to identify its potential as an agent or object of domination, or both");

(3) differentiation (how within a system or context of racial domination "where racial minorities are struggling against white domination, a nonwhite racial group acquires and exercises power over another," and "differential racialization and differential disempowerment" recognizing that racial groups are racialized differently such that:

varying historical experiences and current socio-economic conditions create different racial images, status and power among racial groups, and those differences contribute to intergroup conflict. Both ideas account for differential racial group agency in the construction and maintenance of racial hierarchies and differential racial group responsibility for dismantling those hierarchies. Rooted in critical sociology, differential racialization and disempowerment thus acknowledge that racial groups, even while themselves struggling against domination by others, sometimes, and in complex ways, exercise power over others and that this exercise of power occasionally generates or exacerbates interracial conflict.);

(4) dominance/transformation ("The extent of racial group's power over another is determined in part by its alignment with other . . . actors.").¹⁰¹

Post-Civil Rights America, 95 MICH. L. REV. 821, 891 (1997) [hereinafter Yamamoto, *Critical Race Praxis*]. In the turning away from a Black/White paradigm of race relations to a more complex view of racial dynamics, there are attendant political dangers for people of color. See Chris K. Iijima, *The Era of We-construction: Reclaiming the Politics of Racial Identity and Reflections on the Critique of the Black/White Paradigm*, 29 COL. HUM. R. LAW R. (forthcoming 1997).

¹⁰⁰ See Yamamoto, *Critical Race Praxis*, *supra* note 99, at 891.

¹⁰¹ *Id.* at 892-93.

Thus, power "generates racial harms for which the more powerful group bears responsibility" and transformation "reflects an acceptance of responsibility and affirmative steps toward interracial healing."¹⁰²

The story that was the Prologue to this piece illustrates Professor Yamamoto's point with respect to how subordinated groups must understand and navigate among the myriad and complex ways in which subordination plays out. In fact, to meet the exigencies of contemporary American race hierarchy, a more explicitly tiered rather than binary racial system of subordination is developing.¹⁰³ On one hand, there will be a continued bottom level of subordinated people of color—particularly African Americans. On the other hand, there is a growing middle tier in which a subordinated "model minority," Asians and some Latinos, will be given some racial and class privileges in return for being used as both a buffer and a diversion.¹⁰⁴

¹⁰² *Id.* at 893.

¹⁰³ See Yamamoto, *supra* note 15, at 238 n.67 (referring to Professor Mari Matsuda's fear that Asian Americans could reinforce a racial hierarchy "with white on top, black at bottom, and yellow in the middle").

¹⁰⁴ See Natsu Taylor Saito, *Alien and Non-Alien Alike: Citizenship, "Foreignness," and Racial Hierarchy in American Law*, 76 OR. L. REV. 261, 311-15 (1997). See also Natsu Saito Jenga, *Finding Our Voices, Teaching Our Truth: Reflections on Legal Pedagogy and Asian American Identity*, 3 ASIAN PAC. AM. L.J. 81, 83-84 (1995) (noting how the "model minority" myth places Asian Americans in a racial hierarchy below whites and above African Americans and Latino/Latinas); Neil Gotanda, *Multiculturalism and Racial Stratification*, in MAPPING MULTICULTURALISM, 238, 240 (Avery F. Gordon & Christopher Newfield eds., 1996) (African Americans measured against "model minority" myth). Indeed, as Frank H. Wu has stated:

Under some circumstances, Asian Americans have been granted the status of honorary whites. In anomalous instances, whites may accept Asian Americans as white, despite de jure discrimination. Official school desegregation, for example, could be ignored to permit Asian Americans to attend a white institution. Nevertheless, there do not appear to be many, if any at all, court cases characterizing Asian Americans as whites, where that characterization favors the individual thus identified.

Frank H. Wu, *Neither Black Nor White: Asian Americans and Affirmative Action*, 15 B.C. THIRD WORLD L.J. 225, 248 (1995) (footnotes omitted).

Professor Kevin Johnson has criticized Professor Saito's model of a racial hierarchy as too static a concept since race relations are complex, fluid, and interrelated. Kevin R. Johnson, *Racial Hierarchy, Asian Americans and Latinos as "Foreigners," and Social Change: Is Law the Way to Go?*, 76 OR. L. REV. 347, 360-61 (1997) (conceptualizing race relations as a "solar system" in which positions are fixed but in different relationships to one another over time). Indeed, as Eric Yamamoto has pointed out, the terrain of racial domination and subordination among different racial groups shifts. See Yamamoto, *Critical Race Praxis*, *supra* note 99, at 891-93.

However, although group dominance shifts in different periods of time for different reasons, what stays as an overall constant is the dominance of white supremacist ideology, and therein lies the political usefulness of the hierarchy model. As Professor Johnson himself observes, it is in the shifting of race relations among people of color fighting for "the scraps" that white supremacy is assured. Johnson, *supra* at 362. Thus, it is of paramount importance for each subordinated group

This phenomenon is not without some precedent in the United States.¹⁰⁵ One author, whose 1967 research focused on the relatively large Chinese population (approximately 1200) in the Yazoo-Mississippi Delta, noted that despite the rigidly segregated nature of the Delta society and the social and economic gulf between dominant whites and subordinate Blacks, the Chinese had "managed to leap the chasm."¹⁰⁶

Originally classed with blacks, they are now viewed as essentially "white." The color bar stands, but they have crossed over it. Moreover, in some communities they bridge it anew every day, for they still stand in a sense as an intermediate group. Negroes do not consider them exactly white; Caucasians do not consider them black. They are privileged and burdened with an ambiguous racial identity.¹⁰⁷

Moreover, the entire trend toward a separate "multiracial" racial census category echoes this "new" racial structure and assumes a number of false premises—that there is a "pure" African-American or Latino race that is "unmixed" by other races, and that individuals are free to assign themselves a racial designation unaffected by how they are perceived in larger society.¹⁰⁸

to recognize when and how it is also being used to subordinate another in the interest of preserving the racial status quo. The players in the middle and the bottom of the hierarchy may shift, but it still is dangerous to deny that a hierarchy exists at all since that denial may dilute the focus on the elimination of white racial dominance for all groups. Professor Tanya Hernandez writes how in Latin American countries, those of mixed race act as a "buffer class" to maintain white supremacy. Tanya Kateri Hernandez, *"Multiracial" Discourse: Racial Classifications in an Era of Color-Blind Jurisprudence*, 57 MD. L. REV. 97, 122 (1998). She goes on to speculate that the same motivation may help explain the interest in the multiracial category. *Id.* at 131.

¹⁰⁵ See *infra* notes 118–25 for a discussion of Asians in South Africa under apartheid. It is worth noting that Japanese businessmen were accorded an "honorary white" status due to Japan's importance in South Africa's economy. See, e.g., Roger Thurow, *This Time, Japan Would Rather Stay No. 2*, WALL ST. J., Aug. 12, 1987; Jenga, *supra* note 104, at 93 n.26. Of course, the very notion of an "honorary white" serves to further codify the notion of white supremacy since it "promotes whiteness as an ideal." Frank H. Wu, *From Black to White and Back Again*, 3 ASIAN L. J. 185, 207 (1996) (reviewing WHITE BY LAW: THE LEGAL CONSTRUCTION OF RACE).

¹⁰⁶ See JAMES W. LOEWEN, *THE MISSISSIPPI CHINESE, BETWEEN BLACK AND WHITE* 2 (2nd ed. 1988).

¹⁰⁷ *Id.*

¹⁰⁸ See Hernandez, *supra* note 104, at 103 (stating that multiracial categories reduce race to an "individual-focused assessment of fluid cultural identity"); Jacinta Ma, *Census 2000 Issues Heat Up*, THE NAPALC REV., Spring 1997, at 3 (reporting on H.R. 830 requiring federal agencies to provide opportunity for respondents to specify "multiethnic" or "multiracial"); see also Steven A. Holmes, *Panel Balks at Multiracial Census Category*, N.Y. TIMES, July 9, 1997, at A12 (reporting that while seven states have a multiracial category and nine other states are considering the issue,

Many children of mixed race couples are "raced" as the darker parent.¹⁰⁹ The political effect of such a new category is to create an illusion that racism is not part of a highly sophisticated system of dominance and subordination, but simply a matter of individualized self-naming. This further fractionalizes and dilutes the coming majority of color into more disparate constituencies in which there are only "minorities"—whites then become the largest of these minorities.¹¹⁰

This "informal" tiering, of course, is highly reminiscent of the rigidly tiered structure of the now dismantled South African apartheid.¹¹¹ Although to many of my colleagues of color the news may be old, and despite the outcry that the proposition might occasion by some of my other colleagues, it is becoming increasingly clear that as South Africa has begun the arduous struggle to dismantle the effects of its apartheid history, America has embarked upon the creation of a

a federal task force will recommend not including a multiracial category on federal forms such as the Census Bureau forms, but will recommend that an individual of mixed racial parentage may self-identify and check off several races simultaneously on federal demographic forms). President Clinton has directed his "advisory panel" on race to focus on multiracialism rather than black/white relations. See James Bennet, *Clinton Renews Emphasis on "Multiracialism,"* N.Y. TIMES, July 18, 1997, at A20. However, the critique of the traditional black/white paradigm of race relations has been used by some to divert attention away from the operation of white supremacy. See Iijima, *supra* note 99.

¹⁰⁹ Indeed, the young golf sensation Tiger Woods is usually referred to as being African American irrespective of the fact that his mother is Thai. See, e.g., Richard E. Lapchick, *Lessons of Tiger Woods Will Not be Easy Ones*, N.Y. TIMES, May 18, 1997, § 8 at 8 (comparing Woods' victory in the Masters to Jackie Robinson's breaking of the professional sports color barrier). However, to the extent that there is any acknowledgment of his mixed heritage at all, it is still bounded by racial stereotypes. In his essay, Lapchick reports that radio call-in talk shows or newspaper articles have attributed Woods' intelligence, family orientation, and his sense of racial perspective in his acknowledgment of the sacrifices and contributions of pioneering African-American golfers solely to his being half Asian! *Id.*

¹¹⁰ Neil Gotanda, *Asian American Rights and the "Miss Saigon Syndrome,"* in ASIAN AMERICANS AND THE SUPREME COURT 1087, 1087 (Hyung-Chan Kim ed., 1992). Gotanda discusses how the model minority image "carries an implied racial context of racial stratification and that there are distinct ideological messages implicit within the model minority image and racial stratification." See *id.* at 1088. The ideological message is articulated as follows:

Under the model of racial stratification . . . the economic disparities between Black and White . . . do not appear to be a genuine social problem. The presence of more successful Asian Americans and Latinos, located between Whites and African Americans, proves that the social and economic barriers can be overcome and are not rooted in "race." Thus racial stratification serves to justify and legitimate existing racial disparities.

Id. at 1091.

¹¹¹ See, e.g., EUGENE P. DVORIN, *RACIAL SEPARATION IN SOUTH AFRICA* (1952). See also Saito, *supra* note 104, at 345 n.428 (observing that the social position of Asian Americans embodies the similar potential of Coloureds during apartheid).

more subtle, sophisticated brand of apartheid for the new millennium. Moreover, Asian Americans are a lynchpin of it.¹¹²

In fact, after the year 2050, Blacks, Asians, Latinos, and Native Americans will attain a majority population.¹¹³ Whites in America are already visualizing themselves as a racial minority.¹¹⁴ They fear their status is eroding and that people of color are usurping their traditional positions of power and privilege.¹¹⁵ The Supreme Court has taken these

¹¹² Of course, yielding to the temptation to "soundbite" America's racial climate as apartheid comes with attendant risks. As former Judge A. Leon Higginbotham, Jr., warned about the inherent difficulties in comparing the approach to race in two different countries:

[T]here is a high risk of superficiality in comparing two separate countries during different eras. Indeed, to compare race issues in the United States and South Africa over the course of two hundred years is to enter a potential quagmire that few scholars have been willing to explore.

A. Leon Higginbotham, Jr., *Racism in American and South African Courts: Similarities and Differences*, 65 N.Y.U. L. REV. 479, 489 (1990) [hereinafter Higginbotham, *Racism in Courts*]; see also A. Leon Higginbotham, Jr., et al., *De Jure Housing Segregation in the United States and South Africa: The Difficult Pursuit for Racial Justice*, 1990 U. ILL. L. REV. 763, 775 (1990) [hereinafter Higginbotham, *De Jure Housing Segregation*]. Higginbotham states, "[a]lthough there are similarities in the racial histories of South Africa and the United States, they must be considered in light of the substantial differences, . . . [among them] the two countries' populations, demographics, economics, religions, cultures, and governments." *Id.*

There is no attempt here to match exactly the two nations' approaches to racial hierarchy. Instead, simple analogies will illustrate their diverging approaches. However, it should be emphasized that the single greatest difference between the two countries from Higginbotham's perspective may not be as true in the near future as it is now:

Perhaps the single most significant difference is the fact that from the inception of the United States, whites have constituted a numerical majority and have acquired a predominance of economic and political power . . . [such that the] accommodation of the legitimate demands of blacks would not result in a substantial diminution of their power.

Higginbotham, *De Jure Housing Segregation*, *supra* at 775; see also Higginbotham, *Racism in Courts*, *supra* at 490-91. Conversely, given the minority of South African whites, accommodating the demands of black South Africans would "result in the elimination of the white monopoly on political and economic power." Higginbotham, *De Jure Housing Segregation*, *supra* at 776.

¹¹³ See, e.g., Brad Edmondson, *The Minority Majority in 2001*, AM. DEMOGRAPHICS, Oct. 1996, at 16; Ramon G. McLeod, *Census Shows a Turning Point—Hispanics Increasing the Fastest*, S.F. CHRON., Mar. 27, 1996, at A14 (citing a 1996 United States Census Bureau report estimating that during the 21st century the non-Hispanic white population will become a minority).

¹¹⁴ While the actual percentage of the white population in the United States is 74%, whites believe the percentage is under 49.9%. See Priscilla Labovitz, *Immigration—Just the Facts*, N.Y. TIMES, Mar. 25, 1996, at A15. While the actual figure for Blacks is about 12%, the white estimation was about 24%. See *id.*

¹¹⁵ See Richard Morin, *A Distorted Image of Minorities; Poll Suggests that What Whites Think They See May Affect Beliefs*, WASH. POST, Oct. 8, 1995, at A1. A telephone poll, conducted by The Washington Post, the Kaiser Family Foundation, and Harvard University, interviewed 1970 randomly selected Americans, including 802 whites, 474 Blacks, 352 Asians and 252 Latinos. According to the poll, 58% of whites felt that Blacks had jobs of equal or higher quality than those held by whites (46% of whites felt that Blacks had jobs of equal quality to those of whites, 6% said

fears and codified them in its racial jurisprudence by treating whites as a potentially victimized group to be protected.¹¹⁶

White fears of declining power are illustrated by the recent voter initiatives in California which curtail benefits to immigrants and eliminate affirmative action.¹¹⁷ In Texas, where people of color are rapidly gaining numerical superiority, the elimination of racial preferences at the University of Texas Law School is a graphic indication of a desire to return to racial segregation, albeit in a more sophisticated way than during the Jim Crow era.¹¹⁸ Given that the explicit forms of Jim Crow

Blacks had jobs that were "a little better" than whites and 6% stated that Blacks held jobs that were "a lot better").

In addition, unfounded fears that immigration is producing economic hardship bely the fact that immigration adds approximately \$10 billion to the American economy due to an increased labor supply and decreased prices. See Robert Pear, *Academy's Report Says Immigration Benefits the U.S.*, N.Y. TIMES, May 18, 1997, at A1. Any negative effects such as depressed wages or increased competition for low wage jobs were "relatively small." *Id.* Moreover, "immigration does not have a decisive influence" on the economic opportunities of blacks. *Id.* at A24. While in such states as New Jersey and California immigration may account for some increased taxes, this is offset by immigrants helping to "pay the public costs of the aging baby boom generation." *Id.* Thus, "the vast majority of Americans are enjoying a healthier economy" as a result of immigration. *Id.* at A1; see also Karen Brandon, *Foreign-Born Help U.S. Economy, Immigration Group's Study Says*, CHI. TRIB., July 8, 1998, at N8. In fact, the assumption of a large influx of undocumented immigrants from Mexico has been dramatically overblown. See Sam Dillon, *U.S.-Mexico Study Sees Exaggeration of Migration Data*, N.Y. TIMES, Aug. 31, 1997, at A1 ("The first formal migration study by the American and Mexican governments has concluded that the number of undocumented Mexican workers who have settled in the United States in this decade is far lower than some politicians have suggested, only about 105,000 a year.").

¹¹⁶ See Alexandra Natapoff, *Trouble in Paradise: Equal Protection and the Dilemma of Interminority Group Conflict*, 47 STAN. L. REV. 1059 (1995). Natapoff explores Justice O'Connor's opinion in *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 476-511 (1989) (plurality opinion), to show how it casts the factual circumstances simply as multiple racial groups competing as equals for power and wealth, recasting the notion of "minority status" as a "temporary numerically inferior presence in a given locale, rather than as a group subject to historic discrimination and in need of systemic remedy." See *id.* at 1075.

¹¹⁷ In *Coalition for Economic Equity v. Wilson*, 110 F.3d 1431 (9th Cir. 1997), a Ninth Circuit panel held that the California Civil Rights Initiative ("Proposition 209"), banning the use of race, gender, color, ethnicity or national origin in public employment, education or contracting, did not violate the Fourteenth Amendment's Equal Protection Clause. *Id.* at 1440. Using the familiar "colorblind" rationale, the court held that when "a state prohibits all its instruments from discriminating against or granting preferential treatment to anyone on the basis of race or gender, it has promulgated a law that addresses, in neutral-fashion, race-related and gender-related matters." *Id.* at 1444. For a description of an effect of anti-affirmative action measures in California see *supra* note 116 and accompanying text.

Proposition 187 was a 1994 California ballot initiative that denied state benefits and services to undocumented immigrants. Enforcement of major provisions was enjoined in *League of United Latin Citizens v. Wilson*, 908 F. Supp. 755 (C.D. Cal. 1995) (holding that sections of the initiative attempted to regulate immigration and were preempted by federal law).

¹¹⁸ After the Fifth Circuit Court of Appeals declared unconstitutional its admissions policy which considered the race of an applicant, only three African Americans will be in the 1997

segregation are not politically viable (at least not yet), the imperative of continued racial subordination by an increasingly isolated white minority will require simultaneously sophisticated mechanisms of racial stratification and control, and the maintenance of stereotypes to monitor and suppress dissatisfaction by those subordinated.¹¹⁹ This

first-year class of 500 at the University of Texas Law School. See Peter Applebome, *In 2 Law Schools Black Enrollment Scarcely Exists*, N.Y. TIMES, June 28, 1997, at A1.

At the University of California at Berkeley, after the Board of Regents ban on affirmative action in 1995, there is only one African American entering student in the fall 1997 entering class of 270. See *id.* At UCLA Law School the projected entering number of African Americans is ten, a decline of almost 50% from the year before. See *id.* Indeed, at Berkeley, one Black student is a decline from twenty the previous year; at Texas the decline is from twenty-one to three. See *id.* There is also a significant decline in the number of entering Latino students at the law schools at both Berkeley and the University of Texas. See *id.* These figures underscore the prediction that the abandonment of race as a factor in law school admission would drastically affect the diversity of law schools, barring potential students of color who would both graduate and successfully pass the bar. See Linda F. Wightman, *The Threat to Diversity in Legal Education: An Empirical Analysis of the Consequences of Abandoning Race as a Factor in Law School Admission Decisions*, 72 N.Y.U. L. REV. 1, 52 (1997).

In a related matter, in California, a state where initiatives against immigration have succeeded, anti-Asian violence increased 80% from 1994 to 1995 in Southern California and 10% in Northern California. See 1995 AUDIT OF VIOLENCE AGAINST ASIAN PACIFIC AMERICANS, THE CONSEQUENCES OF INTOLERANCE IN AMERICA, THIRD ANNUAL REPORT OF THE NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM 11 (1995). Hate crimes against Asian Americans in the United States rose 17% in 1996. Aurelio Rojas, *Hate Crimes on Rise Against Asian Americans*, S.F. CHRON., Sept. 9, 1997, at A2.

¹¹⁹ Apartheid looked "to a state based upon democratic-aristocratic concepts, that is of democratic processes within the fold of the white race." DVORIN, *supra* note 111, at 58. Thus, if a traditional caste system is marked by vertical segregation, apartheid was marked by both vertical and horizontal (territorial) segregation. See *id.* at 59. Apartheid's overall scheme was to reduce "the area of intercourse between the non-European races as well as between them and the white race." *Id.* at 94. There were some attempts to classify based upon appearance: European by appearance and social circle, African by appearance and social circle, etc. WILMOT G. JAMES, AMERICAN BAR FOUNDATION WORKING PAPER SERIES #9214, GROUP AREAS AND THE NATURE OF APARTHEID 26 (1992). Spouses of mixed couples were classified "downward" and only those Coloureds who "passed" and had married whites were classified "upward" as white. See *id.* This strict segregation between populations was to provide conditions for races to develop "independently" of each other. See *id.* at 151.

This is not to suggest that other status categories such as class or gender are not relevant and, in some cases, determine the ordering of hierarchy either in apartheid South Africa or the United States. However, in apartheid South Africa as well as in the contemporary United States, "[r]ace, under certain conditions may become the content of class struggle since race may be the modality in which class is lived, the medium through which class relations are experienced, and the form in which it is appropriated." HAROLD WOLPE, RACE, CLASS & THE APARTHEID STATE 52 (1988) (quoting Stuart Hall). Wolpe describes and critiques various political theories in apartheid South Africa: "race reductionist theories" which assume that "within a racial group there is a uniform, common and equal investment in the racial ordering of the social system," *id.* at 12; "economic reductionist theories" which define interests solely in terms of class interests which, in turn, are entirely defined by the economic relations of production and in which race is merely

increased sophistication is played out on both an ideological and political level.

It is interesting to note that the view toward South African Asians (Indians, Malays, Chinese) under apartheid was that no matter what their status, they were not considered an "indigenous part of South Africa," and the long range goal was to reduce their population.¹²⁰ Thus, there was an attempt to lower the status of the Asian population "so as to offer no threat to white supremacy" in the economy of the South African nation.¹²¹ The Nationalists allowed the Indian population to own land and thus put Indians on a higher economic level than Africans, but allowed them no franchise of any form, thus giving them a political status inferior to Africans.¹²²

This distinction had the desired divisive political consequences.¹²³ On the one hand, the South African Asian population could choose between regarding themselves apart from the other non-European

an external instrument for the reproduction of class interests, *id.* at 14-15; and "colonialism of a special type" or "internal colonialism" which divides society into a category of white subjects and a subordinate category of Black subjects and in which there are internal class divisions within each category but the "overriding factor is racial division." *Id.* at 30.

It is beyond the scope of this article to articulate comprehensively the consequences of the interstices of different relationships. However, it is enough to recognize the importance of assessing the relative position of one's group with respect to another in any given political context. See Yamamoto, *Critical Race Praxis*, *supra* note 99, at 891 (acknowledging the "capacity of racial groups, amid changing racial demographics and socio-economic structures, to be simultaneously oppressed and oppressive, liberating and subordinating").

¹²⁰ DVORIN, *supra* note 111, at 157-58.

¹²¹ See *id.* at 162.

¹²² See *id.* at 161.

¹²³ See *id.* at 169-71. Mixed race Coloureds (descended predominantly from European-slave unions) traditionally kept themselves apart from the Native population and, prior to the Nationalist victory in 1948, those who lived in Cape Province actually had certain advantages over native Africans such as no residential segregation, the ability to own property, the right to vote subject to certain conditions, and the right to hold elective local offices, although they suffered similar restrictions to Black Africans in other provinces. See *id.* at 61-63. Although Coloureds were usually discriminated against in employment and social practice in the vast majority of South Africa, they were seen traditionally as an "appendix of the European population" and an "intermediate nation" whose interests were more "closely allied" to those of Europeans than other sections of the population. *Id.* at 63-64. After the Nationalist victory in 1948, further restrictions were imposed on the Coloureds, even in Cape Province, and their interests became no longer linked to those of the Europeans. See *id.* at 64.

It is worth noting that before 1948 there was some view to allow limited economic and political participation for Coloureds, and had that been successfully done "the racial balance would have been significantly altered." GEORGE M. FREDRICKSON, *WHITE SUPREMACY, A COMPARATIVE STUDY IN AMERICAN AND SOUTH AFRICAN HISTORY* 272 (1981). It was the alienation of Coloureds and Asians through the harshness of apartheid, and thus the unity among the non-white groups in opposition to apartheid, that forced whites to extend civil rights to all nonwhites. See *id.* at 273. Indeed, it has been speculated that if a more sophisticated approach to racial hegemony had been taken by South African whites, South Africa as a "racially diverse nation of

segments and thus demand equality for themselves alone or they could have regarded their issue as involving all non-Europeans.¹²⁴ On the other hand, Indians were resented due to exploitation by Indian traders in native areas in terms of high prices and inferior goods.¹²⁵ In 1949, rioting Africans in Durban targeted Indian property and killed as many as 142 Indians.¹²⁶ Thus, the racial tiering under apartheid not only codified the white minority's supremacy, it also divided the opposition to it by people of color.¹²⁷

essentially European culture (with the whites securely entrenched as a major population group) would have been in a strong position to survive indefinitely" *Id.*

¹²⁴ See DVORIN, *supra* note 111, at 165.

¹²⁵ See *id.* at 169.

¹²⁶ See *id.* at 168. A similar phenomenon happened in the Mississippi Delta after the assassination of Dr. Martin Luther King, Jr. in 1968. Chinese stores in the Delta's black communities were hard hit. See LOEWEN, *supra* note 106, at 174-75. The author notes that Chinese stores were "safer" than white stores since Chinese had less access to police protection. See *id.* at 176. Moreover, the targeting of Chinese merchants had another motivation:

Finally, it may be that the Chinese as a group are now singled out because Negroes are particularly enraged by the irony of their gain in status. White grocers were always white. Chinese, however, were once in approximately the same position as blacks, were once brothers in oppression. . . . Blacks may feel a sense of betrayal in the action of the Chinese.

Id.

This sentiment is echoed again thirty years later in analyses of the violent discourse between the African-American and Korean-American communities:

The African American community continues to struggle against a status quo legal narrative—white supremacy. The struggle at present is articulated as a violent discourse, and given the recent presence of Koreans in minority markets, African American violence inevitably envelops Koreans. However, Koreans per se are not the primary target. Rather, African Americans attack Koreans as symbols of "entrepreneurship." . . . African Americans have suffered a long history of racial injustice and economic inequality. As a consequence African Americans have reacted negatively to Koreans not only because Koreans have attained greater economic power, but because they present symbols of opportunities for economic success not available to African Americans.

Reginald Leamon Robinson, *"The Other Against Itself": Deconstructing the Violent Discourse Between Korean and African Americans*, 67 S. CAL. L. REV. 15, 41-42 (1993) (footnotes omitted); see also Lisa C. Ikemoto, *Traces of the Master Narrative in the Story of African American/Korean American Conflict: How We Constructed "Los Angeles"*, 66 S. CAL. L. REV. 1581 (1993).

¹²⁷ See Stephen Ellmann, *Law and Legitimacy in South Africa*, 20 L. & SOC. INQUIRY 407 (1995). Ellmann makes the observation that although Blacks, Coloureds and Asians were all victimized by apartheid, Coloureds and Asians were "less acutely victimized" and when it came time to shape a new order, Coloureds and Asians gave substantial support to the National Party (formerly the "all-white champion of apartheid") and the majority of Africans gave their support to the African National Congress. *Id.* at 432-33. It is interesting that in a recent New York Times article, the author's questions about racism "split along racial and ethnic lines [where] . . . African Americans tended to see the problem in much starker terms than did whites, Asian Americans and Hispanic respondents . . ." Steven A. Holmes, *Many Uncertainties About President's Racial Effort*, N.Y. TIMES, June 16, 1997, at A16.

In the present day United States, as racial tiering becomes more of a political necessity for white minority hegemony, there is a not-so-subtle ideological campaign developing that focuses on two prominent themes: (1) the national "character" is inextricably bound with certain racial and cultural normative assumptions; and (2) since racial identity is essentially and solely an individual's choice, racism is cognizable only if it is explicitly practiced upon individuals. However, the reality is, as one commentator has expressed it:

Regardless of how truly one is able to express one's personal identity, structural racism in U.S. society will persist in forcing people into one of the five boxes of the racial/ethnic pentagon [Black, White, Asian, Native American, Hispanic] for the foreseeable future.

....

The fact that individual identity is vitally important does not preclude the fact that societal identity of groups is also important. Because the two are not necessarily the same, it logically follows that they do not necessarily have to agree. The way in which a person defines himself or herself is distinct from the way which society defines him or her, although both have important repercussions and ramifications. We gain nothing but confusion by trying to blend the two concepts or obfuscate their distinctness.¹²⁸

Indeed, the fact remains that "[w]hites have the *option* of ethnic identity, whereas people of color do not."¹²⁹ Similarly, with regard to the former theme, the operating normative principle has "become one in which racism has disappeared except as imagined by its subordinated subjects who [continue] to "suffer" in an unbelievable world—a color blind world of white innocence."¹³⁰

¹²⁸Nancy A. Denton, *Racial Identity and Census Categories: Can Incorrect Categories Yield Correct Information?* 15 LAW & INEQ. J. 83, 97 (1997).

¹²⁹*Id.* at 91.

¹³⁰Calmore, *supra* note 98, at 28 (quoting John O. Calmore, *The Case of the Speluncean Explorers: Contemporary Proceedings*, 61 GEO. WASH. L. REV. 1764, 1776 (1993)).

Indeed, the color-blind myth confuses the ideal of an end to racial hierarchy with what already exists. See Charles R. Lawrence, III, *The Epidemiology of Color-Blindness: Learning to Think and Talk About Race Again*, 15 B.C. THIRD WORLD L.J. 1, 6 (1995) (footnotes omitted). In fact, "[d]enial is a pervasive symptom of contemporary American racism." *Id.* at 8. Of course, the denial of reality merely perpetuates the condition of racial subordination. See Neil Gotanda, *A Critique of "Our Constitution Is Colorblind,"* 44 STAN. L. REV. 1, 16 (1991) [hereinafter Gotanda, *Our Constitution is Colorblind*] ("Nonrecognition [of race] fosters the systematic denial of racial subordination and the psychological repression of an individual's recognition of that subordination, thereby allowing such subordination to continue.") (footnote omitted).

As opposed to the cumbersome mechanisms of apartheid and Jim Crow, "[t]oday's racism is state-of-the-art."¹³¹ It plays upon the old fears, yet simultaneously legitimates and masks old white supremacist politics by reducing race to mere ethnicity ("in the end we're all hyphenated Americans"). It dresses up old concepts of white supremacy in categories of individualized opportunity, meritocracy, and universalism by appealing to "traditional values" and "individual responsibility."¹³²

This open fear of the loss of racial hegemony is by no means a radical fringe notion. It is simply the more decayed underbelly of colorblind egalitarian propaganda—the "Willie Horton" appeal to white supremacy.¹³³ Its ability to foster fears of an irresistible tidal wave of color inundating the country is evident by noting that in the first months of 1997 alone, four bills and one resolution were submitted to

¹³¹ Calmore, *supra* note 98, at 28.

¹³² *Id.* at 52–53. Indeed, "traditional values" are given a decidedly racial spin:

As late as 1950, somewhere up to nine out of ten Americans looked like me. That is, they were of European stock.

And in those days, they had another name for this thing dismissed so contemptuously as "the racial hegemony of white Americans."

They called it "America."

PETER BRIMELOW, *ALIEN NATION, COMMON SENSE ABOUT AMERICA'S IMMIGRATION DISASTER* 59 (1995). Brimelow understands that race has always been defining in American politics. *See id.* at xvii ("[T]he racial and ethnic balance of America is being radically altered through public policy. This can only have the most profound effects. *Is this what Americans want?*") He has no illusions that this nation is or should be color-blind. *Id.* at 10 ("[M]any modern American intellectuals [are] just unable to handle a plain historical fact: that the American nation has always had a specific ethnic core. And that core has been white."). Thus, his fears are expressly about losing racial hegemony. *Id.* at 56 ("For the first time, virtually all immigrants are racially distinct 'visible minorities.' They come not from Europe. . . . And, as we have seen, they are coming in such numbers that their impact on America is enormous—inevitably within the foreseeable future, they will transform it."). And what is most telling is the appeal to his own sense of "family values"—the continuing legacy of white privilege for his children:

My son, Alexander, is a white male with blue eyes and blond hair. He has never discriminated against anyone in his little life. . . . But now public policy discriminates against him. The sheer size of the so-called "protected classes" that are now politically favored, such as Hispanics, will be a matter of vital importance as long as he lives. And their size is basically determined by immigration."

Id. at 11.

Brimelow recounts how he read a newspaper story in which a Chinese-American college student, when asked what grade she would give America, replied that she "would give it an incomplete." He continues:

Really. Well, my twin brother and I did have to grade America . . . in the summer of 1967. We gave it an A+. And we still give it an A+ . . . what's left of it.

And—if only for my son Alexander's sake—I'd like it to stay that way.

Id. at 221.

¹³³ *See* Calmore, *supra* note 98, at 51. Calmore astutely notes that Ronald Reagan:

the United States Congress to declare English the nation's "official language."¹³⁴

Moreover, the "neutral" themes of individual meritocracy have become less racially opaque.¹³⁵ The far right has "legitimate[d] its revived racial politics in a way that did not simply reassert white identity as inherent white supremacy in order to re-establish America as a white country" but has instead "hijacked" the notion of color-blindness for its own racial project and set the stage for the development of new right racial agendas playing on the same fears.¹³⁶

In the infamous book, "The Bell Curve," after attempting to order racial intelligence, the authors intone that since inequality of intelligence is a reality, "it is time for America once again to try living with inequality, as life is lived"¹³⁷ It is not entirely coincidental that as some call for "independent development within neighborhoods," ra-

silently incorporated aspects of the far right's racial project in order to broaden his support base. He recognized that the far right's appeal extended to people who would normally disassociate themselves from extremism.

Id.

¹³⁴On January 7, 1997, the English Language Empowerment Act was introduced, H.R. 123, to declare English as the official language of the United States Government (§ 161) and requiring that all written communication of official Government business be in English (§ 163(a)). H.R. 123, 105th Cong. (1997).

On February 4, 1997, H.R.J. Res. 37 was introduced in the House of Representatives proposing a Constitutional Amendment establishing English as the official language of the United States to be "used for all public acts . . . of the Government of the United States and the governments of the several States." H.R.J. Res. 37, 105th Cong. § 1 (1997).

On February 5, 1997, H.R. 622, the Declaration of Official Language Act of 1997 was introduced in the House and was essentially the same as H.R. 123, but also repealed bilingual voting requirements. H.R. 622, 105th Cong. (1997).

On February 13, 1997, S. 323, the Language of Government Act of 1997 was introduced in the Senate which mandated English but allowed "terms of art" such as "E Pluribus Unum" to grace government documents. S. 323, 105th Cong. § 165(2) (F) (1997).

H.R. 1005, the National Language Act, was introduced in the House on March 11, 1997. The House looked to repeal not only the bilingual voting requirement (§ 4), but looked to terminate bilingual education programs as well (§ 3). H.R. 1005, 105th Cong. (1997).

In addition, at least 18 states have adopted some variation of an "official English" law. *See* *Yniguez v. Arizonans for Official English*, 69 F.3d 920, 927 n.11 (9th Cir. 1995) (listing Arizona, Alabama, Arkansas, California, Colorado, Florida, Georgia, Hawai'i, Illinois, Indiana, Kentucky, Mississippi, Nebraska, North Carolina, North Dakota, South Carolina, Tennessee, and Virginia).

¹³⁵*See generally* RICHARD J. HERRNSTEIN & CHARLES MURRAY, *THE BELL CURVE, INTELLIGENCE AND CLASS STRUCTURE IN AMERICAN LIFE* (1994).

¹³⁶*See* Calmore, *supra* note 98, at 50 n.145, 51-52.

¹³⁷HERRNSTEIN & MURRAY, *supra* note 135, at 551. In terms chillingly reminiscent of classic apartheid political theory, they expressly assert that the notion that a "natural aristocracy" governing those "less equally intellectually endowed" is a principle of the Founders. *Id.* at 530-31. What is remarkable to me about this statement is not that as slaveholders many of the Founding Fathers must have believed in a natural order of human hierarchy, but rather the baldness of its

cial segregation in residential communities remains rampant across the country, particularly in urban areas.¹³⁸ Indeed, given the recent anti-immigrant and anti-affirmative action climate of white America in the

assertion. Herrnstein and Murray end with a thinly veiled paean to the time-honored apartheid tradition of separate parallel development of the races:

Cognitive partitioning will continue. It cannot be stopped, because the forces driving it cannot be stopped. But America can choose to preserve a society in which every citizen has access to the central satisfactions of life. Its people can, through an interweaving of choice and responsibility, create valued places for themselves in their worlds. They can live in communities—urban or rural—where being a good parent, a good neighbor, and a good friend will give their lives purpose and meaning. They can weave the most crucial safety nets together, so that their mistakes and misfortunes are mitigated and withstood with a little help from their friends.

Id. at 551. Indeed, their political solution is a return to the idea of localized government in which everybody, it is assumed, knows their "place":

A wide range of social functions should be restored to the neighborhood when possible and otherwise to the municipality. The reason for doing so, in the context of this book, is not to save money, not even because such services will be provided more humanely and efficiently by neighborhoods (though we believe that generally to be the case), but because this is one of the best ways to multiply the valued places that people can fill.

Id. at 540.

¹³⁸ See Denton, *supra* note 128, at 85 (noting that current levels of segregation for African Americans in large cities remain near their all-time high and show few signs of decreasing (citing DOUGLAS S. MASSEY & NANCY A. DENTON, *AMERICAN APARTHEID: SEGREGATION AND THE MAKING OF THE UNDERCLASS* 222 (1993))).

Denton and Massey reach three conclusions: (1) residential segregation continues unabated in the largest metropolitan Black communities and that this spatial isolation cannot be attributed to class; (2) whites accept open housing only in principle but not in practice; (3) discrimination in housing against Blacks is widespread and at high levels in urban housing markets. See MASSEY & DENTON, *supra* at 109. They find that Blacks are more likely to be tolerated by whites as neighbors only when they constitute a small percentage of the population. Thus:

where racial composition is such that open housing can be implemented without threatening white preferences for limited contact with blacks, desegregation should occur; but in areas where relatively large numbers of blacks imply a high degree of black-white mixing under an open market, racial segregation will be maintained.

Id. at 111. The significance of race was striking when applied to Caribbean Hispanics. Denton and Massey found that average levels of segregation among Hispanics were dictated by whether they were white, mixed-race, or Black in appearance. *Id.* at 112-14. The authors conclude that:

[w]hen it comes to housing and residential patterns, therefore, race is the dominant organizing principle. No matter what their ethnic origin, economic status, social background, or personal characteristics, African Americans continue to be denied full access to U.S. housing markets.

Id. at 114.

Fairfax County, Virginia, one of the wealthiest communities in the nation (with \$70,000 annual household income which is twice the national median) recently cut welfare benefits, blocked expansion of subsidized housing, and made it more difficult for the unemployed to get into public housing in the county. These actions affect mostly recent immigrants from Latin America, Asia, and Africa. See Eric Lipton, *Discouraging the Poor in Fairfax*, WASH. POST, June 29, 1997, at A1 (reporting county officials cutting benefits as a disincentive to potential low income residents).

1990s, the ugly ideology of those like Herrnstein, Murray, and Brimelow cannot be written off as simply that of marginal right-wing fanatics. Moreover, what is so sophisticated about the approach is its lack of readily observable structure. The gender ceiling is glass, the bars are tantalizingly see-through, and the enforcement of status is through the vague uncertainties of "colorblind" judicial opinion and "neutral principle" rather than through the crude truncheon of codes and statutes. Yet, the gap between white and color, and between rich and poor, continues to accelerate apace.¹³⁹

Perhaps the most tragic consequence of acquiescence to racial injustice is its effect on those who acquiesce. The failure to resist the imposition of inferior status gradually becomes an acceptance of the logic of it:

Every colonized people—in other words, every people in whose soul an inferiority complex has been created by the death and burial of its local cultural originality—finds itself face to face with the language of the civilizing nation; that is with the culture of the mother country. The colonized is elevated above his jungle status in proportion to his adoption of the mother country's cultural standards. He becomes whiter as he renounces his blackness, his jungle.¹⁴⁰

In April 1942, on behalf of the JACL, Masaoka sent a letter to Milton Eisenhower, the director of the War Relocation Authority, outlining his suggestions for WRA policy. Among these suggestions were some related to adjustment after the war; Masaoka wrote:

We do not relish the thought of "Little Tokyos" springing up in these resettlement projects, for by doing so we are only perpetuating the very mannerisms and thoughts which mark us apart, aside from physical characteristics. We hope for a one hundred percent American community.¹⁴¹

¹³⁹ See Rich Thomas, *A Rising Tide Lifts the Yachts*, NEWSWEEK, May 1, 1995, at 62D. The article reports that the wealth of 1% of U.S. households climbed from 20% of the country's aggregate private assets in the mid-1970s to 35.7% in 1989. In 1969 the top 20% of American households received 7.5 times the income of the bottom 20%, but by 1992 they received 11 times the income. The median income among Black families was 54% of that for white families in 1992, as compared to 61% in 1969. See Barbara Vobejda, *Black-White Income Gap Widens Over Two Decades*, WASH. POST, Sept. 15, 1994, at A14.

¹⁴⁰ FRANTZ FANON, *BLACK SKIN WHITE MASKS* 18 (1967).

¹⁴¹ THE LIM REPORT, *supra* note 72, at § IIB at 58–59. Indeed, of Masaoka's "colorblind" assumptions of a postwar American reality, Weglyn writes:

Thus, the carrot of model minority status for Asian Pacific Americans will not only be useful as a sword against other people of color; it will also serve as a dagger in the heart of the self-esteem of all Asian Americans who accept its "benefits" because the weapon may only be wielded in the defense of the racial status quo.

CONCLUSION

This is a dangerous Orwellian era of racial backlash, when virulent right-wing ideology is dressed up and passed off as "conservative" politics. It is a time when attempts to roll back the clock to Jim Crow are named "civil rights initiatives." It is a period in which conservative judicial activism, in a naked attempt to ossify society's racial and economic stratification, is done in the name of "strict judicial construction." We live in a time when there is a highly charged battle cry against "political correctness." However it is shouted by those who would use the code words of the right—"less government," "local autonomy," "colorblindness," "traditional values," "personal responsibility," "neutral principles," "traditional American culture"—as markers of acceptable political and personal morality.

Asian Pacific Americans are at a crossroads in terms of where they will stand in the coming era of race relations; they will either be used to solidify the control of white supremacy or stand as a force against it. In the justice that was rendered by national redress for incarceration lies the danger that its price will be ideological co-optation. By giving tribute to those who chose to acquiesce to the injustice and neglecting those who protested it, Congress has indicated the price of its beneficence.

But the lesson of redress must be that only through resistance to injustice at the moment it occurs, will a tragedy like internment be avoided in the future. Indeed, the largest tragedy will be if we continue

Perhaps nothing had influenced Nisei so profoundly as wartime accusations of their "unassimilability," innuendos that it was their clannishness and propensity to cluster which had helped to bring on the calamity. . . . The goal of jettisoning their Japaneseness and assimilating into the larger society became a near obsession for them in the early postwar years. Many forced themselves into resettling in unknown parts of the country, cutting themselves adrift from the tight-knit society in which they and their parents had once found security.

WEGLYN, *supra* note 28, at 274. See also HOHRI, *supra* note 21, at 137 ("There are a great many Japanese-Americans who tried to take the magic pill to dissolve their 'Jap-ness.'"). As Fanon describes it, when the colonized mentality robs the colonized of all sense of self-worth, the response is, "quite simply [I] will try to make myself white: that is, I will compel the white man to acknowledge that I am human." FANON, *supra* note 140, at 98.

to slouch toward a society in which power and wealth accumulate in increasingly smaller concentrations. In the lacuna of time before the new millennium, it is incumbent upon all Asian Pacific Americans, particularly Japanese Americans—indeed, all people of good will—to continue to resist attempts to impose white minority rule.

It is worth reminding ourselves constantly that while America may have been built by all its people, it still does not yet belong to all of us.

EPILOGUE

Recently, I overheard my father suddenly ask my eight-year-old son, Alan, whether he wanted to see his grandpa's war medals. I was surprised to hear him ask Alan this question since I never remembered him asking me when I was a child whether I had wanted to see them.

My father had always seemed reluctant to talk about his war experiences. Until fairly recently, he was never anxious to go to his 442nd Army unit reunions, remarking that he didn't "like all the patriotic crap that went along with them." He kept in sporadic touch with only one army buddy—the sole survivor, besides my father, of an ill-fated patrol in the forests of Italy. They exchanged Christmas cards for fifty years but visited each other only occasionally. In fact, my sister and I never met him. Still, when his friend died only a few months ago, he and my mother immediately made travel plans to grieve with his widow.

It was shortly after that when my father took Alan into his bedroom and brought out the box of medals containing his Purple Heart and Bronze Star, and all the other colorful bars and clusters he had won. Alan pinned some on, asked about others, and played with them in the same way he often played with shells, or coins, or figurines—by lining them up, comparing them, ranking them in order of which he liked best. When he asked about the significance of one or the other, my father would try earnestly to give explanations. I'm not sure whether Alan understood them completely.

As I listened to the interchange, I tried to remember whether my father ever shared his wartime experiences with me as he did that afternoon with Alan. I drew a blank. I did remember, however, that when I reached draft age in the Sixties my father and mother encouraged me to protest the Vietnam War. I recalled that when I had just entered high school my father took me and my sister to Washington, D.C., in 1963 to be in the Big March. I thought back to the cold early dawns when he and the entire family would board the morning buses to Washington to participate in the national anti-war rallies.

I remembered how he had packed me off to Brooklyn—Oceanhill, Brownsville, and Bedford Stuyvesant—to work with the African-American communities there during the struggle over community control of schools. He was one of the first to volunteer to work with the fledgling Asian Community Center twenty-five years ago.

As I reflected, it dawned upon me that he had shown me his medals all along. I had been taught what he had learned from his wartime experiences, in the same way that my mother had taught me about what she had learned from her camp experiences by sharing with me her lifetime of organizing against anti-Asian violence, for workers' and immigrants' rights, and for the empowerment of women, people of color, and the poor. They both understood that the responsibility of being oppressed is first to survive and then to resist. They both realized that in each battle fought against subordination we earn a citation in the larger struggle for dignity and equality. These are the medals I was shown as a child. These are the mementoes I keep pinned close to my heart. These are the medals I hope to pass on to Alan and his younger brother, Christopher.

Alan finally took one of my father's old medals and placed it in his treasure collection of cards, figurines, old pennies, and found objects. My father put the remainders back into the box, and returned it to the bottom of his bedroom bureau drawer. Nothing more has been spoken of it since that afternoon.

The rest is up to me.